

COMMITTEE ACTION SHEET

COUNCIL DOCKET OF _____

☐ Supplemental ☐ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Amendments to the Municipal Lobbying Ordinance

☒ Reviewed ☐ Initiated By Rules On 3/07/07 Item No. 1

RECOMMENDATION TO:

Approve

VOTED YEA: Peters, Young, Maienschein, Frye, Madaffer

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

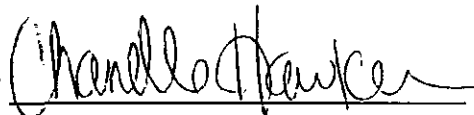
REPORT TO THE CITY COUNCIL NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Ethics Commission Memorandum dated February 21, 2007; Ethics Commission's PowerPoint dated March 7, 2007; Ethics Commission Lobbying Firm Quarterly Disclosure Report Form

COUNCIL COMMITTEE CONSULTANT



Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

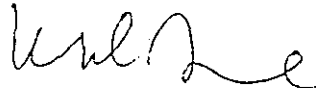
(619) 236-6220

DATE: July 3, 2007
TO: Stacey Fulhorst, Executive Director, Ethics Commission
FROM: Michael J. Aguirre, City Attorney
SUBJECT: 1472 and Proposed Amendments to Lobbying Ordinance

In accordance with discussions between our offices, we have signed the 1472 so that you can docket the amendments to the lobbying ordinance for the Council meeting on July 16-17, 2007. However, we have not signed the ordinance because we need additional time to complete our analysis. As you know, the regulation of lobbying activities raises important legal questions about constitutional rights and enforcement. The additional time is necessary for a thorough review of these legal issues. We expect to complete our analysis before the Council meeting. In the meantime, please feel free to contact us if you have any questions.

MICHAEL J. AGUIRRE, City Attorney

By



Michael J. Aguirre
City Attorney

MJA:als

**CITY OF SAN DIEGO
ETHICS COMMISSION**

Office of the Executive Director

M E M O R A N D U M

DATE: May 11, 2007

TO: Council President and Members of the City Council

FROM: Dorothy Leonard, Chair, San Diego Ethics Commission
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

Introduction

One of the responsibilities of the Ethics Commission, as set forth in SDMC section 26.0414(g), is to "undertake a review of the City's existing governmental ethics laws, and to propose updates to those laws to the City Council for its approval." As you will recall, the Commission completed an extensive review and overhaul of the City's campaign laws in 2004 and 2005. As soon as this process was completed, the Commission began working on proposed amendments to the City's Lobbying Ordinance. Beginning in November of 2005, the Commission held a series of eighteen public workshops on specific aspects of the City's Lobbying Ordinance. The Commission received input from members of the public as well as members of the regulated community. In addition, the Commission considered the results of staff research which included a review of lobbying regulations in place in other jurisdictions, particularly those in California, as well as legal research on the constitutional principles involved in developing lobbying regulations.

As a result of this comprehensive and deliberative process, the Commission has compiled a package of proposed amendments. As discussed in detail below, each one of the Commission's proposals has been tailored to address an actual problem with the existing laws or to address real or perceived corruption in the lobbying process.

The Commission initially presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on October 25, 2006. The Commission returned to the Rules Committee with several amended recommendations on March 7, 2007, at which time the Committee members unanimously decided to forward the package of proposed amendments to the full City Council. Note that several members of the Committee asked the Commission and/or the City Attorney to provide responses to several questions in the interim between the Rules Committee meeting and the time this matter is docketed for consideration by the full City Council. These questions and the majority of the Commission's responses are set forth in the attached memorandum

President and Members of the City Council
May 11, 2007
Page 2

dated April 16, 2007 (Attachment A). Two additional responses (both concerning the definition of "City Official") are discussed below.

Proposed Amendments

A summary of the proposed changes forwarded by the Rules Committee for your consideration is as follows:

A. Definition of Lobbyist and Threshold Determination (SDMC §§ 27.4002 & 27.4005):

Proposed changes: Currently, lobbyists are required to register with the City and disclose their activities if they earn a total of \$2,730 for lobbying and related activities in a calendar quarter. The Commission recommends changing this threshold to \$1 for contract lobbyists. In other words, the Commission believes that any person who contracts with others to influence a municipal decision should register as a lobbyist when the person receives or becomes entitled to receive any type of compensation for lobbying activities. The Commission further recommends that the \$1 threshold be based on any economic consideration for services rendered, including consideration that is contingent upon the accomplishment of a particular goal (whether or not the goal is accomplished).

With respect to organization lobbyists (companies that employ lobbyists in-house), the Commission believes that the registration threshold should be changed to ten lobbying contacts within sixty calendar days. The regulation of in-house lobbyists is the most difficult issue the Commission grappled with during the past eighteen months. On one hand, the public clearly has an interest in the disclosure of lobbying efforts by employees of companies when these employees attempt to influence municipal decisions that could have a substantial effect on the revenue of their employers. On the other hand, the Commission does not want to propose a law that would effectively require average citizens to register as lobbyists for simply exercising their right to petition their elected representatives on an issue that may affect their employers. The Commission's proposal seeks to resolve this balancing act by regulating only those employees who exhibit a substantial level of advocacy for their employer.

The Commission considered a variety of options for regulating in-house lobbyists, including thresholds based on compensation earned for lobbying, total hours spent lobbying, and percentage of time spent lobbying. Although no registration threshold methodology is perfect, the Commission determined that a threshold based on a number of contacts is the most preferable, particularly when compared to the other options. Because employees of organization lobbyists typically do not keep track of the time they spend on lobbying activities, it is very difficult to enforce a law that is based on the amount of time they spend or the amount of compensation they earn for those activities. In addition, the contacts threshold is more equitable than other options because it does not make distinctions based on level of income. For example, the City's current threshold, which is based on compensation earned for lobbying activities, requires an employee who earns \$200,000 per year to register as a lobbyist much sooner than an employee who earns \$50,000 per year, even if they both engaged in the same amount of lobbying activities. Because earnings do not necessarily equate to influence, the Commission concluded that a threshold based on actual lobbying contacts is the preferable means of identifying a substantial level of advocacy. Moreover, a contacts threshold is one that is easily verifiable from an enforcement perspective; it is much simpler for Commission staff

to determine the number of contacts a particular individual has had with City Officials than it is to calculate amount of time spent or dollars earned.

The Commission is recommending "ten contacts" within "sixty days" after considering a variety of factors. Although the Commission recognized that there are eight elected officials who can be lobbied on any municipal decision, it ultimately decided to recommend a threshold of ten contacts in order to ensure that the law is not inadvertently applied to constituents who contact council offices on several occasions over a two month period. The proposed sixty day period is intended to cover the general timeframe before a municipal decision when most lobbying takes place.

It is important to note that the members of the public and regulated community who communicated with the Commission on the threshold issue overwhelmingly indicated their support for the proposed \$1 threshold for contract lobbyists, and the proposed contact-based threshold for organization lobbyists. In other words, the Commission heard no objections to the proposed registration thresholds, with the exception of several lobbyists who recommended that the Commission go further in its definition of lobbyist by including people who are not compensated for their lobbying activities. The Commission considered this option, but ultimately concluded that the regulation of uncompensated advocacy would have the unintended effect of also regulating constituents who are simply seeking to communicate with their elected officials. It is the Commission's view that regulating uncompensated lobbying activities would inevitably result in a complicated and overly broad ordinance, as well as a highly confused regulated community. Moreover, as evidenced in the attached comparison chart reflecting lobbying laws in place in other jurisdictions, it is highly unusual for government agencies to regulate unpaid individuals as "lobbyists."

In addition to the foregoing, the proposed changes include a new category of lobbyist referred to as an "expenditure lobbyist." This is an entity or individual that attempts to indirectly influence one or more municipal decisions by spending money on public relations, media relations, advertising, public outreach, etc. The Commission concluded that it is important for these activities to be disclosed to the public if the related costs meet or exceed \$5,000 within a calendar quarter. The proposed \$5,000 threshold is intended to avoid regulating the true grass-roots efforts of those who participate in the legislative process.

Rationale for proposed changes: There are a variety of public policy and enforcement problems with the current registration threshold, including the following:

- Persons who are currently engaging in lobbying activities are not registering as lobbyists because they do not meet the registration threshold. In other words, the current system is not working as intended. For example, an individual who earns \$100,000 per year would not meet the current registration threshold of \$2,730 in a calendar quarter, even if he or she met with representatives from each of the 8 Council offices once a week for each of the 12 weeks in a calendar quarter (8 meetings per week @ 0.5 hours per meeting = 4 hours per week; 4 hours x 12 weeks = 48 hours; 48 hours x \$50/hour = \$2,400). This means that a substantial amount of lobbying efforts are not being disclosed to the public.
- The current system inappropriately equates earnings with influence; a lobbyist with a high hourly rate reaches the threshold sooner than a lobbyist with a low hourly rate, even if they

both engage in the same amount and type of lobbying activities. This system is contrary to good public policy because it enables lower-paid lobbyists to avoid registration and disclosure while effectively lobbying on behalf of clients. In addition, because the current threshold is based on compensation actually earned, it exempts lobbyists whose compensation is based on a contingency agreement and whose efforts are unsuccessful.

- The Commission has had difficulty enforcing the current registration threshold for in-house lobbyists primarily because they generally do not keep track of the time they spend on lobbying activities. It is difficult, therefore, for the Commission to ascertain the precise amount of time a person spends on lobbying activities and to determine whether or not that person meets the registration threshold. As a result, an investigation can boil down to a dispute concerning the amount of time that an individual actually spent preparing a letter or waiting to meet with a City Official. In addition, employees of companies are generally reluctant to provide information regarding their salaries, benefits, stock options, bonuses, etc. This creates yet another obstacle in the enforcement process.
- The fact that the current threshold is based on a calendar quarter means that a lobbyist who earned just over the threshold level of compensation from March through May would not have to register as a lobbyist because the compensation was spread out over two calendar quarters. This results in a regulatory system that is both arbitrary and illogical.
- The current system does not capture "expenditure lobbying." The Commission learned through several enforcement actions that special interests in San Diego have spent substantial sums of money on public relations, media, outreach, etc., to generate support for a particular issue. In most of these instances, the sources of the expenditures were never disclosed, and both the public and the City Officials involved in the municipal decisions failed to receive important information that would have been relevant to their assessment of the issues.

After extensive discussion and consideration, the Commission concluded that the proposed changes to the registration threshold would remedy above-referenced problems and create the desired transparency in the lobbying process.

B. Information Provided on Registration Form (SDMC §§ 27.4007, 27.4009, 27.4012):

Proposed changes: The current Lobbying Ordinance requires individual lobbyists to register and disclose their activities. The Commission recommends changing this system to require lobbying firms or organization lobbyists to register and disclose the activities of their lobbyist employees. In addition, in the event that information on a registration form changes (e.g., a lobbyist obtains a new client), the lobbyist is currently required to provide the new information at the time he or she files the next quarterly disclosure report. The changes proposed by the Commission would require lobbyists to amend their registration forms within ten calendar days.

On the form itself, the Commission recommends that the following additional information be disclosed:

- (1) the identity of all clients, including members of a coalition or membership organization who pay \$1,000 or more for a lobbyist's services;
- (2) the outcome sought with respect to the particular municipal decisions the lobbyists intend to influence;
- (3) the number of lobbying contacts with City Officials within the past sixty days (organization lobbyists only);
- (4) the identity of any owners, officers, or lobbyists at the firm or organization who have engaged in campaign fundraising activities (which are defined as those that resulted in \$1,000 or more raised for a candidate) for any current elected official within the past two years, together with the name of the elected official who benefited from the fundraising effort;
- (5) the identity of any owners, officers, or lobbyists at the firm or organization who provided compensated campaign-related services to a current elected official within the past two years, together with the name of the elected official who received the services;
- (6) the identity of any owners, officers, or lobbyists at the firm or organization who provided compensated services under a contract with the City within the past two years, together with the name of the City department, agency, or board for which the services were provided; and

With respect to the disclosure of fundraising activities, campaign-related services, and City contracts, it should be noted that the proposals include a "grandfather" provision that exempts the disclosure of such activities if they occurred prior to January 1, 2007. In addition, it should be noted that the disclosures are extremely limited and do not require the disclosure of specific dates or dollar amounts. Finally, uncompensated officers (e.g. volunteer board members) of organization lobbyists are excluded from these disclosure requirements.

Rationale for proposed changes: Registration by lobbying firms and organization lobbyists (in lieu of registration by individual lobbyists) is intended to ensure that all lobbying activities by the firm or organization are disclosed to the public. For example, under the proposed registration threshold for organization lobbyists, the lobbying activities of all employees of a particular company count toward the proposed 10-contact threshold. This eliminates the potential for a company to avoid registering and disclosing its lobbying activities by simply spreading the work out amongst multiple employees. Similarly, as discussed in greater detail below, it is important for the public to receive information concerning the campaign fundraising activities of all owners, officers, and lobbyists of a particular company. In other words, if the members of a lobbying firm or organization lobbyist have raised substantial sums of money for a particular candidate, but the individuals primarily responsible for the fundraising efforts are not personally engaging in lobbying activities, then the public would not receive relevant information regarding fundraising efforts if only individual lobbyists were required to register and disclose their activities.

The shortened time period for amending the form is designed to ensure that the public receives information in a timely manner regarding lobbying efforts to influence municipal decisions. It simply does not serve the stated purpose and intent of the lobbying laws to delay informing the public of the identity of the person paying to influence a particular decision until months after the decision is made.

With respect to the proposed requirements for additional information on the registration form, the rationale for each proposal is as follows:

- (1) Including within the definition of "client" those members of coalitions or organizations who pay \$1,000 or more for a lobbyist's services will ensure that all relevant information regarding the financing of lobbying activities is disclosed to the public on the lobbyist registration forms. This change was made as a result of information obtained by the Commission during the course of recent enforcement activities. The Commission saw evidence of a trend in "grassroots" lobbying wherein a lobbyist retained and financed by an unpopular or unsympathetic client will recruit members of the public to join the cause, and then hide the identity of the original client by disclosing that the firm's client is a "coalition" of "concerned citizens."
- (2) Information regarding the outcome sought by lobbyists is clearly relevant in terms of fully informing the public regarding lobbying efforts.
- (3) Information regarding the number of lobbying contacts within the previous sixty days is intended to correspond to the proposed contacts-based threshold, while also informing the public of the organization's pre-registration level of advocacy.
- (4) Disclosures regarding previous campaign fundraising efforts over the past two years are intended to provide the public with information regarding the access that lobbyists may have "earned" by fundraising for officials whose vote they now seek to influence. As discussed below, the Commission feels strongly that campaign fundraising efforts must be disclosed on lobbyists' quarterly disclosure reports. It follows, therefore, that information regarding fundraising efforts that occurred before registration is also relevant and should be disclosed to the public. Because the Commission recognizes that it may be difficult to retrieve specific information regarding fundraising efforts that took place years earlier, the Commission's proposal would require lobbyists to merely list the names of those who raised \$1,000 or more for a current elected official within the past two years.
- (5) Information regarding the provision of campaign-related services over the past two years is intended to provide the public with information regarding a special relationship that might exist as a result of a lobbyist's efforts to help a City Official win an elective office.
- (6) Although several lobbyists advised the Commission that a special relationship between an officeholder and his or her campaign consultant are unlikely, several Councilmembers disagreed with this assertion at the October 25, 2006, Rules Committee meeting. The Commission staff subsequently conducted additional research and heard from various Council staffers that elected officials generally have a very good relationship with the

campaign consultants who helped them gain elective office. By way of example, one Council staffer reported that Larry Remer had such a close relationship with former Councilmember Ralph Inzunza after he served as Councilmember Inzunza's campaign consultant that the Councilmember used a list of concerns prepared by Remer and printed on the letterhead of Remer's company (The Primacy Group) when the City Council was considering the creation of the Ethics Commission and the adoption of the Ethics Ordinance. Council staffers pointed out that it is typically only losing candidates who have complaints regarding the services provided by their consultants.

- (7) Disclosures regarding work performed by lobbyists pursuant to a City contract are intended to provide the public with information regarding a close working relationship that might exist between a particular City Official and a lobbyist. In the Commission's experience, the City sometimes retains lobbying firms, including some lobbying firms that are registered with the City to influence local municipal decisions, to assist with the City's lobbying efforts at the state and federal level. In addition, many lobbyists are former City employees. Scenarios such as these support the notion that lobbyists should disclose their current or prior status as City employees or City consultants.

C. Information Provided on Quarterly Disclosure Reports (SDMC §§ 27.4017, 27.4018):

Proposed changes: In order to ensure transparency in the lobbying process and to avoid the appearance of corruption and/or undue influence, the Commission recommends that lobbyists disclose the following additional information on their quarterly disclosure reports:

- (1) The names and departments of individual high-level City Officials contacted by lobbyists during the reporting period.
- (2) The total compensation received by lobbying firms from each client (rounded to the nearest \$1,000), and the total number of contacts by employees of organization lobbyists, during the reporting period.
- (3) Information regarding the outcome sought for each municipal decision influenced.
- (4) Information regarding campaign contributions of \$100 or more made during the reporting period to candidate committees, including candidate-controlled ballot measure committees.
- (5) Information regarding campaign fundraising efforts that resulted in contributions totaling \$1,000 or more for a candidate or a candidate-controlled ballot measure committee during the reporting period.
- (6) Information regarding compensated campaign-related services provided to a candidate or candidate-controlled ballot measure committee during the reporting period.
- (7) Information regarding compensated services provided under contract with the City during the reporting period.

Rationale for proposed changes: The above-referenced recommendations are based on the following underlying principles:

- (1) The Commission believes that identifying the names and departments of individual high-level City Officials contacted by lobbyists is key information that should be disclosed to the public. It is critical for the public to know which City Officials were contacted by a lobbyist. There is a substantive difference between a lobbyist meeting with an elected Councilmember and a lobbyist meeting with a council staffer.

The Commission heard from several lobbyists who argued that it is burdensome to identify each City Official they lobby. The Commission believes that the public's right to have this information far outweighs any inconvenience for lobbyists. In the spirit of compromise, however, the Commission recently revised its initial proposal by narrowing the definition of "City Official" to a select group of high-level positions at the City and City agencies. By way of comparison, it is relevant to note that the current lobbying laws broadly define a "City Official" as any City employee who participates in the consideration of a municipal decision, other than those who work in a purely clerical, secretarial, or ministerial capacity.

At the March 7, 2007, Rules Committee meeting, the Commission was asked whether the list of high-level positions includes all of the positions recently created under the "strong Mayor" form of government. Additional research conducted by Commission staff revealed that the job titles of high-level positions do not sometimes correspond to their working titles. Consequently, at its May meeting, the Commission decided to modify the proposed definition of "City Official" in order to add the following additional job titles: Council Representative, Management Assistant to City Manager, Financial Operations Manager, and Budget/Legislative Analyst. Because these additional positions were not included at the time the Rules Committee considered the Commission's proposals, we have attached an "Alternative A" to the proposed ordinance that includes these four additional job titles.

The list of high-level positions included within the proposed definition of "City Official" includes members of City boards and commissions who file Statements of Economic Interests. At the March 7, 2007, Rules committee meeting, the Commission was also asked to consider whether some boards should be excluded from the definition, such that lobbyists would not have to disclose lobbying contacts with these officials. The Commission considered this issue at its May 10, 2007, meeting, and concluded that it would not be appropriate to exclude any boards or commissions from this definition. The Commission based this recommendation on the fact that the members of these boards have some type of decision-making capabilities, as reflected in the City's prior determination that the members must file Statements of Economic Interests [SEIs]. In other words, if the members of a particular board must disclose their personal economic interests because their board has been determined to be more than "solely advisory" in nature, then lobbying contacts with these members should be disclosed to the public. (Note that the members of approximately seventy percent of City boards are required to file SEIs.)

Several lobbyists have objected to the proposed disclosure of specific City Officials contacted, and claimed that the disclosure of this information would have a "chilling effect"

because City Officials will not want to speak to lobbyists if their names will appear in a disclosure report. During the course of the Commission's discussions on the City's lobbying laws, the Commissioners repeatedly reiterated their view that there is nothing inherently wrong with lobbying, which they recognize as a valuable and integral part of City government. Accordingly the appearance of a person's name in a lobbying disclosure report should not be considered as evidence of anything more than the performance of normal City duties. That said, the Commission would strongly encourage any high-level City Official who has reservations about the public disclosure of a particular meeting with a lobbyist to reconsider the appropriateness of having that meeting.

- (2) The Commission does not believe that the current system, which requires lobbyists to disclose their compensation in certain ranges (\$0-\$5,000, \$5,000-\$25,000, \$25,000-\$50,000, over \$50,000), provides the public with sufficient information regarding the financing of lobbying activities. Because it may be difficult for a lobbyist to ascertain the precise dollar amount earned for lobbying efforts, the Commission has proposed that lobbyists disclose an amount rounded off to the nearest \$1,000. Note that other jurisdictions in California require lobbyists to disclose the exact amount earned.

As discussed above, the proposed threshold for organization lobbyists is based on a number of contacts because of the difficulty inherent with in-house lobbyists (employees of organization lobbyists) calculating the amount of compensation they earn for City lobbying activities. Accordingly, in lieu of disclosing the amount of compensation received for lobbying, it is more appropriate for organization lobbyists to disclose the total number of contacts with City Officials in connection with a particular municipal decision.

- (3) As discussed above, an important aspect of the information regarding a lobbyist's efforts to influence a particular municipal decision is the actual outcome sought by the lobbyist or his/her client. Depending upon the identity of the client and the specific municipal decision, the outcome sought might not be readily apparent to the public.
- (4) Although campaign contributions are disclosed on reports filed by City candidate and ballot measure committees, this information may not be disclosed until long after a municipal decision is made (in non-election years, candidates only file semi-annual campaign statements). In addition, it can be difficult for the public to connect a contribution on a campaign statement with a municipal decision identified on a lobbying statement. The Commission concluded, therefore, that this information should be included on quarterly disclosure reports to ensure that the public receives it in a timely and efficient manner.
- (5) Because of the City's campaign contribution limits, campaign fundraising has become the means by which individuals and entities may demonstrate their financial support for a candidate. When these individuals and entities contact officeholders who benefited from their fundraising efforts and attempt to influence their official decisions, the appearance of improper influence is created. In other words, the public may believe that a lobbyist obtained special access to, and/or undue influence over, an elected official when he or she has helped finance that official's election campaign. This perception is underscored by recent events in San Diego involving the prosecution of local elected officials and a lobbyist

who fundraised for them. In addition, as discussed in greater detail in the Memo to the Rules Committee dated February 21, 2007 (attached as Exhibit B), there are many documented examples throughout the country in which lobbyists obtain, or appear to obtain, special access to elected officials via campaign contributions and campaign fundraising. The Commissioners also considered the personal experience of one of the Ethics Commissioners, who explained that he received special access (e.g., private telephone numbers and email addresses) for public officials only after he engaged in campaign fundraising efforts to benefit these officials.

In order to address the public's perception that corruption exists in the lobbying arena, it is critical to provide transparency in the lobbying process wherever possible and practical. Accordingly, the Commission believes that quarterly disclosures should detail all fundraising efforts that result in \$1,000 or more in campaign contributions for a City candidate or candidate-controlled ballot measure committee. It is important to note that the Commission's proposal is narrowly tailored and would require that lobbyists only disclose (1) contributions personally delivered by the lobbyist, and (2) contributions for which the lobbyist "has identified himself or herself to a candidate or candidate's controlled committee as having some degree of responsibility for raising." In other words, if the lobbyist takes credit for providing a candidate with contributions, then the lobbyist would disclose the amount of those contributions on a quarterly disclosure report.

Several lobbyists have objected to this proposed disclosure requirement and suggested that lobbyists should only be required to disclose contributions that they personally deliver to a candidate. In the Commission's experience, this approach would enable lobbyists to easily circumvent disclosure rules by simply asking someone else to deliver the contributions on their behalf. Moreover, this approach would ignore prevalent practices in campaign fundraising that involve the coding of contribution envelopes so that lobbyists receive credit for contributions sent directly by contributors to a candidate's campaign committee.

In addition to their objections on the grounds that they should be required to disclose only contributions personally delivered to candidates, some lobbyists have suggested that the fundraising disclosure requirement should apply to all fundraisers and should be included in the City's campaign laws. Although the Commission may ultimately recommend such disclosure by candidate committees under the City's campaign laws, it is the Commission's view that it is certainly appropriate to impose this requirement on paid lobbyists at this time because of the role that they play in influencing municipal decisions. The public has an undeniable interest in obtaining information regarding the different ways in which paid lobbyists obtain access and/or influence.

- (6) As discussed above, the disclosure of campaign-related services is intended to provide the public with information regarding a special relationship that might exist as a result of a lobbyist's efforts to help a City Official win an election. Although it is important for a lobbyist to disclose on a registration form whether he or she has provided campaign-related services to a candidate in the past (possible months or years before a lobbying contact with the same official), it is just as important – arguably even more important – for a lobbyist to

disclose on a quarterly report that he or she is engaged in providing campaign related services to an elected official at the same time that he or she is lobbying that same official.

- (7) As discussed above, information gathered by the Commission suggests that lobbyists who perform work under contract with the City may develop special relationships with certain City Officials, and that such relationships should be disclosed if these lobbyists are also paid by private parties to influence decisions made by City Officials. The rationale behind this recommendation is very similar to the rationale discussed above with respect to the disclosure of campaign-related services. In both instances, disclosures create a higher degree of transparency than currently exists.

D. Limits on Gifts from Lobbyists (SDMC § 27.4030):

Proposed changes: The amendments proposed by the Commission include a \$10 limit on gifts from lobbyists to City Officials in a calendar month. They also include a \$10 limit on gifts delivered by lobbyists when they are acting as an agent or intermediary for the donor of the gift.

Rationale for proposed changes: The \$10 gift limit proposal stems from the Commission's belief that, in the view of the public, City Officials may be influenced in the performance of their official duties if they receive an expensive meal or a ticket to an event from a lobbyist. The recent conviction of a United States Congressman in connection with excessive gifts from a lobbyist has reinforced the public's belief that gifts from lobbyists to government officials are indications of undue influence.

It is relevant to note that, as reflected in the comparison chart (Attachment B, Exhibit 4), other jurisdictions throughout California have similar gift limits, or have imposed an outright ban on gifts from lobbyists. Rather than ban all gifts outright and potentially expose City Officials to an enforcement action for simply accepting a cup of coffee from a lobbyist, the Commission ultimately settled on the \$10 limit to allow officials to accept gifts with a nominal value.

Conclusion


Throughout many months of deliberations, beginning in November of 2005, the Commission has received extremely valuable input from lobbyists and members of the public regarding a variety of proposals under consideration. Each recommendation was seriously considered and most were incorporated into the Commission's proposals. The input the Commission received was instrumental to the preparation of preparing amendments that are straightforward, practical, and comprehensible, while incorporating important public policy considerations.

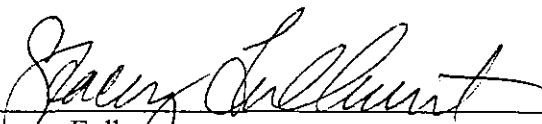
As explained in detail in the Memo to the Rules Committee dated February 21, 2007 (Attachment B), each of the Commission's proposals has been drafted to address an actual problem with the existing laws, or to address real or perceived corruption in the lobbying process. If adopted, these reforms will dramatically improve what is largely an ineffective ordinance. The proposed amendments will ensure that people who are compensated to influence municipal decisions are required to register as lobbyists, and will allow the Ethics Commission to effectively enforce the law when such individuals fail to register.

In addition, the proposed reforms will require lobbyists to disclose more information than is presently required, which will in turn create more transparency and combat the appearance of corruption that surrounds lobbying and related activities. Although some lobbyists and City officials may object to the notion that there is anything untoward in the lobbying process, the volume of empirical evidence recited in the exhibits to Attachment B shows that it is commonplace for lobbyists to obtain access and/or influence through campaign contributions and fundraising, and that these activities engender an appearance of corruption.

Finally, as explained in Attachment B, the Commission is confident that there has been a thorough legal analysis of the proposed amendments to the City's lobbying laws. In the opinion of the Commission's General Counsel, Cristie McGuire, the proposed reforms do not substantially interfere with the ability of a lobbyist to exercise his or her First Amendment rights. Because there is a rational basis for each proposal, and because each provision has been crafted to achieve a specific goal, Ms. McGuire is confident that the proposals do not impermissibly infringe on constitutionally protected activities. Although the Commission certainly defers to the Office of the City Attorney to ultimately determine whether the proposed ordinance is "legal," the Commission is confident that the City has sufficiently demonstrated the need for the proposed reforms, and that they would survive any legal challenge.

We look forward to the City Council considering the proposed amendments as soon as docketing of this issue is feasible. The Commission is hopeful that the proposed reforms will be considered and adopted by the City Council this June, following final budget modifications on June 11. In order for the new laws to take effect on January 1, 2008, the Commission will need four to six months to create new registration and disclosure forms, prepare new fact sheets, and educate the regulated community regarding the changes to the Lobbying Ordinance. If you have any questions, please contact Stacey Fulhorst at your convenience.


Dorothy Leonard
Chair, San Diego Ethics Commission


Stacey Fulhorst
Executive Director, San Diego Ethics Commission

Attachments:

- A) Memorandum from Dorothy Leonard and Stacey Fulhorst to City Council and City Attorney dated April 16, 2007
- B) Memorandum from Stacey Fulhorst to Rules Committee dated February 21, 2007

cc: Catherine Bradley, Chief Deputy City Attorney
Kris Michel, Deputy Chief Community & Legislative Services

**CITY OF SAN DIEGO
ETHICS COMMISSION**

MEMORANDUM

DATE: April 16, 2007

TO: Council President and Members of the City Council
City Attorney Mike Aguirre

FROM: Dorothy Leonard, Chair, San Diego Ethics Commission
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

Beginning in November of 2005, the Commission held a series of eighteen public workshops on specific aspects of the City's Lobbying Ordinance. The Commission received input from members of the public as well as members of the regulated community. As a result of this comprehensive and deliberative process, the Commission has compiled a package of proposed amendments to the City's Municipal Lobbying Ordinance.

The Commission initially presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on October 25, 2006. The Commission returned to the Rules Committee with several amended recommendations on March 7, 2007, at which time the Committee members unanimously decided to forward the package of proposed amendments to the full City Council.

At the March 7, 2007, Rules Committee meeting, several Committee members asked the Commission and/or the City Attorney to provide responses to the following questions in the interim between the Rules Committee meeting and the time this matter is docketed for consideration by the full City Council.

Question No. 1: The proposed definition of "City Official" includes a list of job titles that correspond to high-level positions in the City. Under the proposed new laws, lobbyists would be required to report lobbying contacts with these high level officials. Does this list include all of the positions recently created under the "strong Mayor" form of government?

Response No. 1: Additional research conducted by Commission staff indicates that, in some cases, the job titles of some high-level positions do not correspond to their working titles. Consequently, at its next meeting on May 10, 2007, the Commission will consider whether to recommend adding four additional

job titles to the definition of "City Official." If the Commission decides to recommend adding any or all of these four job titles, the Commission staff will prepare alternative language for the City Council to consider.

Question No. 2: Some of the positions delineated in the proposed definition of "City Official" include people who may serve as hearing officers. May lobbyists lawfully contact these officials on quasi-judicial matters?

Response No. 2: As the Commission indicated at the March 7, 2007, Rules Committee meeting, we will defer to the City Attorney's Office to advise the City Council on this legal issue.

Question No. 3: The proposed definition of "City Official" includes all members of City boards and commissions who are required to file Statements of Economic Interests. Are there any boards or commission that should be excluded from the Lobbying Ordinance? In other words, are there any boards or commissions whose actions lobbyists should be allowed to influence without having to disclose anything?

Response No. 3: The Commission will consider this issue at its next meeting on May 10, 2007. Any changes in the proposed amendments will be identified in the staff report accompanying the Request for Council Action. In addition, if appropriate, Commission staff will prepare alternative language for the City Council to consider.

Question No. 4: The amendments proposed by the Commission would require lobbying firms and organization lobbyists to disclose the total amount of compensation they receive from each client, rounded to the nearest \$1,000. Should lobbyists instead disclose a range of compensation received from each client?

Response No 4: As explained during the Commission's initial presentation to the Rules Committee on October 25, 2006, the Commission does not believe that the current system, which requires lobbyists to disclose their compensation in certain ranges (\$0-\$5,000, \$5,000-\$25,000, \$25,000- \$50,000, over \$50,000), provides the public with sufficient information regarding the financing of lobbying activities. Because it may be difficult for a lobbyist to determine the precise dollar amount earned for lobbying efforts, the Commission's proposal requires only that lobbyists disclose amounts rounded off to the nearest \$1,000. Note that other jurisdictions in California require lobbyists to disclose the exact amount earned.

Question No. 5: Are some lobbying contacts inappropriate in the context of managed competition?

Response No. 5: Because the City has not yet adopted any rules or guidelines regarding the managed competition process, it is premature for the Commission to consider if certain types of lobbying contacts should be regulated in a unique manner, or even prohibited altogether. If the Mayor and Council ultimately determine that certain types of lobbying contacts in the course of the managed competition process are inappropriate, the Commission would consider amendments to the Lobbying Ordinance at that time.

Question No. 6: Both the current and proposed ordinances indicate that direct communication for the purpose of influencing a municipal decision does not include speaking at a public hearing or providing written statements that become part of the record of the public hearing. How do documents become part of the record of a public hearing?

Response No. 6: When the City Clerk's Office receives documents concerning a particular item, the staff checks to see if the item is on a current Council docket or an upcoming docket. If so, then the materials are passed onto the City Clerk's Docket Section, and they become part of the record of the Council meeting. If not, then the materials are maintained in the City Clerk's general files, and they do not become part of the record of a particular Council meeting. If a lobbyist intends a particular document to become part of the record of a public hearing, the lobbyist should either forward the document to the City Clerk's Office with a docket item number once the item is docketed, or check with the City Clerk's Office to ensure that a document transmitted before a docket is published is contained within the docket back-up materials. The same process should be followed with respect to a Council Committee meeting, except that the lobbyist should transmit documents to the Committee Consultant or check with the Committee Consultant to ensure that a particular document is part of the back-up materials for a Committee meeting.

Question No. 7: What is the distinction between an exchange of information and an attempt to influence a municipal decision?

Response No. 7: Both the current and proposed lobbying laws define "influencing a municipal decision" as an attempt to affect any action by a City Official by any method, including "providing information, statistics, analysis or

studies to a City Official.” In other words, there is no distinction between an exchange of information and an attempt to influence a municipal decision, provided of course that the information provided is related to a municipal decision and could affect an action by a City Official concerning the municipal decision.

Question No. 8: The Commission’s proposed reforms would require lobbying firms and organization lobbyists to disclose certain types of campaign fundraising efforts when their owners, officers, or lobbyists personally deliver contributions to a candidate, or if they identify themselves to a candidate as having some responsibility for raising the contributions. Is it possible to clarify what it means to take credit for raising a contribution?

Response No. 8: During the course of its extensive deliberations on the topic of fundraising disclosure, the Commission initially considered requiring lobbyists to disclose all campaign contributions “made at the behest” of the lobbyist. After hearing from lobbyists that this would be unduly burdensome because it could require them to disclose contributions made by their friends and neighbors if they merely discussed a particular candidate with a lobbyist, the Commission decided to narrowly tailor this provision to require lobbyists to disclose only those contributions they personally deliver, or those contributions they take credit for raising. In the Commission’s experience, taking credit for a contribution can take many forms: coding of contribution remittance envelopes, providing a list of contributors to a candidate’s campaign staff, etc. It is not practical or desirable to limit the language in the ordinance to the specific ways that a lobbyist can take credit for campaign contributions, as doing so would likely encourage lobbyists to find a different way to take credit for contributions and thereby avoid the disclosure requirements.

As discussed above, there are two remaining issues that the Ethics Commission will discuss at its next meeting on May 10, 2007. The Commission anticipates submitting a Request for Council Action (Form 1472) no later than Monday, May 14, 2007. As explained at the March 7, 2007, Rules Committee meeting, the Commission is hopeful that the proposed reforms will be considered and adopted by the City Council as soon as possible. In order for the new laws to take effect on January 1, 2008, the Commission will need four to six months to prepare new registration and disclosure forms, prepare new fact sheets, and educate the regulated community on the various provisions in the new ordinance. Accordingly, the Commission respectfully requests that the Council President consider docketing this issue for City Council consideration in June (possibly after the City Council addresses final budget modifications on June 11).

At the March 7, 2007, Rules Committee meeting, the City Attorney indicated that he intends to conduct a legal analysis of the Commission’s proposed reforms. The Ethics Commission

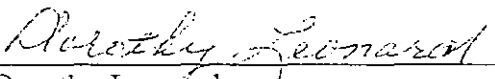
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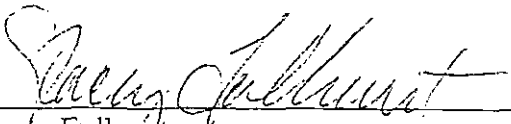
President and Members of the City Council

April 16, 2007

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respectfully requests, therefore, that the City Attorney present the results of his analysis to the City Council as soon as possible to facilitate docketing of this issue in June.


Dorothy Leonard
Chair, San Diego Ethics Commission


Stacey Fulhorst
Executive Director, San Diego Ethics Commission

cc: Catherine Bradley, Chief Deputy City Attorney
Kris Michel, Deputy Chief Community & Legislative Services
Chris Cameron, Rules Committee Consultant
Michelle Strauss, Policy Advisor, Council District 1

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CITY OF SAN DIEGO
ETHICS COMMISSION

Office of the Executive Director

MEMORANDUM

DATE: February 21, 2007
TO: The Committee on Rules, Open Government and Intergovernmental Relations
FROM: Stacey Fulhorst, Executive Director
SUBJECT: Proposed Amendments to the Municipal Lobbying Ordinance
(San Diego Municipal Code sections 27.4001, et seq.)

A. Updates since October 25, 2006, Rules Committee Meeting

On October 25, 2006, the Ethics Commission made a presentation to the Rules Committee regarding its proposed amendments to the City's Lobbying Ordinance. At that time, the Rules Committee asked the Commission to consider the following issues, and to report back with its recommendations:

- Consider whether to narrow the scope of who is a "City Official" to require lobbyists to disclose only those contacts with high-level officials, not mid-level officials.
- Consider modifying the requirement that lobbyists disclose their campaign fundraising activities for the past four years on their registration forms, and in particular whether a shorter time period would be more appropriate.
- Consider adding a requirement that lobbyists disclose campaign services provided to current elected officials.
- Consider clarifying the language regarding campaign fundraising disclosures.
- Consider clarifying the language regarding reportable compensation.
- Consider clarifying and/or narrowing the definition of a "contact" with a City Official.

After considering the issues raised at the October 25, 2006, Rules Committee meeting, the Commission has amended its recommendations as follows:

- The definition of "City Official" has been narrowed in scope to include only twenty-nine high-level positions at the City and at City agencies (this list includes members of City boards and commissions, as well as the positions of City Manager, Assistant City Manager, and Deputy City Manager which are presently nonexistent under the "strong Mayor" form of government).

- The requirement to disclose campaign fundraising information on lobbyist registration forms has been changed from four years to two years. In addition, a “grandfather” provision has been added to exempt fundraising efforts that occurred prior to January 1, 2007. It is important to keep in mind that this disclosure is extremely limited and essentially requires the lobbyist to simply identify the name of the elected official who benefited from the fundraising efforts. There is no requirement to disclose specific dates or amounts raised.
- Also with regard to the disclosure of campaign fundraising activities, the phrase, “contributions the lobbyist knows or has reason to know were raised” has been deleted and replaced with the same language used in the definition of “fundraising activity.” This language requires lobbyists to disclose contributions that are personally delivered to a candidate or to a candidate’s committee, as well as contributions that the lobbyist identifies himself or herself to the candidate as having some responsibility for raising.
- There is a new requirement for the disclosure of a lobbyist’s compensated campaign-related services. The applicable language is patterned after the provisions requiring the disclosure of campaign fundraising – lobbyists would be required to disclose very limited information for compensated campaign services provided to an elected City Official within the past two years on their registration forms, and disclose more detailed information on their quarterly disclosure reports for compensated campaign-related services provided to a candidate or a candidate-controlled committee during the reporting period.
- Language regarding reportable compensation has been revised to state that lobbyists must disclose the amount of compensation they receive for “lobbying activities,” which includes direct communications with City Officials, as well as monitoring decisions, preparing testimony, conducting research, attending hearings, communicating with clients, and waiting to meet with City Officials.
- The definition of “contact” has been revised to clarify that it includes only those instances of direct communication with City Officials that are made for the purpose of influencing a municipal decision. Although the Rules Committee asked the Commission to consider whether it would be appropriate to limit “contacts” to certain locations or lengths of time, the Commission ultimately concluded that such an approach would create loopholes that would inevitably be used by lobbyists to avoid disclosure. For example, if a “contact” is defined as only those communications that take place in the office of a City Official, lobbyists could simply ensure that their contacts took place in another location. Similarly, if the ordinance includes a time limit for contacts, it would inevitably result in multiple, shorter meetings with lobbyists. [It is important to distinguish the definition of “contact” in the lobbying ordinance from a law or policy regulating ex-parte communications. As you will recall, such a law or policy was proposed by Carl DeMaio at the October 25, 2006, Rules Committee meeting. This issue has been placed on the Commission’s legislative agenda for 2007 at the request of the Rules Committee.]

In addition, during the course of the Commission’s deliberations over the past few months, several other issues were brought to the Commission’s attention that resulted in the following changes to the draft ordinance:

- The definition of “client” has been updated to include members of a coalition or membership organization who pay \$1,000 or more for a lobbyist’s services. This will ensure that all relevant information regarding the financing of lobbying activities is disclosed to the public on the lobbyist registration forms. This change was made as a result of information obtained by the Commission during the course of recent enforcement activities. Essentially, there is a new trend in “grassroots” lobbying whereby a lobbyist retained and financed by an unpopular or unsympathetic client will recruit members of the public to join the cause, and then hide the identity of the original client by disclosing that the firm’s client is a “coalition” of “concerned citizens.”
- The provisions that address the disclosure of compensation have been amended to clarify that a lobbyist must report the compensation received from each client, but is not required to itemize the compensation received for each municipal decision he or she attempts to influence on the client’s behalf.
- The definition of “expenditure lobbyist” (a lobbying entity that does not have any direct communications with City Officials, but makes expenditures for public relations, advertising, public outreach, etc., to influence a municipal decision) has been revised as follows: (1) the \$5,000 threshold applies to any number of municipal decisions rather than to a single decision; (2) the corresponding time period for the threshold is a calendar quarter rather than ninety consecutive days; and (3) language has been added to clarify that an expenditure is considered made when a payment is made or when consideration is received.
- A new provision has been added that would require lobbyists to disclose compensated services they provide pursuant to a contract with the City. This provision is based on new information recently brought to the Commission’s attention. In particular, in the past the City has retained lobbying firms, including some lobbying firms that are registered with the City to influence local municipal decisions, to assist with the City’s lobbying efforts at the state and federal level. In addition, the City has hired individuals who previously lobbied the City. Because several other provisions recommended by the Commission would require the disclosure of activities that may serve to create a special relationship between a lobbyist and a City Official, the Commission believes that lobbyists should also disclose whether they have provided compensated services under a contract with the City. It should be noted that both Los Angeles and San Francisco require lobbyists to disclose contracts they have with their respective cities.

At this time, it is the Commission’s view that the proposed amendments are in final form and are ready for consideration and approval by the Rules Committee. There are lobbyists who continue to object to the Commission’s recommendations by asserting that the proposals are “too complicated,” or that there has been “no legal analysis” of the recommended changes, or that the proposed amendments constitute “a solution in search of a problem.” As discussed in greater detail below, the Commission does not believe there is any basis in fact for these claims. Instead, as demonstrated by the information set forth below, the proposed reforms will fix a series of problems that exist with the current ordinance, and will serve to prevent corruption and the appearance of corruption by creating far more transparency in the lobbying process. Moreover, as a result of the thorough legal analysis performed by the Commission’s General Counsel throughout the past fifteen months, the Commission is confident that its proposals will withstand judicial scrutiny. The Commission does, of course, defer

to the City Attorney's Office to advise you on the legal issues associated with the Commission's proposals.

B. Foundation for Commission's Proposals

As the Commission explained at the October 25, 2006, Rules Committee meeting, each one of the Commission's proposals has been closely drawn to address an actual problem in terms of the effectiveness of the existing laws, or to address real and perceived corruption in the lobbying process. The following is an overview of the substantive proposed changes and the corresponding rationale:

New Definition of Lobbyist and Registration Threshold:

As explained at length in my memorandum to the Rules Committee dated October 19, 2006, the current definition of lobbyist and the registration threshold simply do not work. Investigations conducted by Commission staff reveal that there are people engaged in continuous and substantial lobbying of City Officials, yet they are not currently required to register because they do not meet the compensation threshold (currently \$2,700 in a calendar quarter). For example, a lobbyist who works in-house for a company and earns \$100,000 per year could meet with the staff in each of the eight Council offices once a week for twelve weeks, and still not meet the quarterly compensation threshold. The current law, therefore, allows a substantial amount of lobbying to take place without any disclosure to the public. In addition, the current system improperly equates earnings with influence, and requires an employee who earns \$200,000 per year to register as a lobbyist much sooner than an employee of another company who earns \$50,000 per year, even if they both engage in the same amount of lobbying activities. The Commission has also found that the current system is ineffective in terms of enforcement because it is very difficult to determine the precise amount of time someone spends on lobbying activities, which is essential in order to compute whether or not the individual reached the registration threshold.

In order to correct these problems, the Commission has proposed a \$1 threshold for lobbying firms (contract lobbyists hired by third parties) and a contacts-based threshold for organization lobbyists (companies that employ lobbyists in-house). As discussed at great length in my previous memorandum, the Commission determined that the contacts-based threshold (10 contacts in 60 calendar days) is the best means of regulating significant attempts to influence decisions that may affect the revenue of a lobbyist's employer, without also inadvertently requiring average citizens to register as lobbyists for simply exercising their right to petition their elected officials on an issue that may affect their employers.

It is important to note that members of the public and regulated community who communicated with the Commission on the threshold issue overwhelmingly indicated their support for the proposed \$1 threshold for lobbying firms, and the proposed contacts-based threshold for organization lobbyists. In other words, the Commission heard no objections to the proposed registration thresholds, with the exception of several lobbyists who recommended that the Commission go further in its definition of lobbyist by including people who are not compensated for their lobbying activities.

The Commission's proposals include a third category of lobbyist known as an "expenditure lobbyist." This is an entity or individual that attempts to indirectly influence municipal decisions by spending money on public relations, media relations, advertising, public outreach, etc. The Commission

concluded that it is important for these activities to be disclosed to the public if the related costs meet or exceed \$5,000 within a calendar quarter. The Commission based this proposal on its experience with several enforcement matters that involved spending by special interests to generate public support for a particular issue. In those enforcement matters, the sources of the expenditures were never disclosed, and both the public and the City Officials involved in the municipal decisions failed to receive important information that would have been relevant to their assessment of the issues.

Disclosure of Campaign Contributions and Fundraising:

As discussed in greater detail below, there are many examples throughout this country in which lobbyists obtain, or appear to obtain, unique access to elected officials via campaign contributions and campaign fundraising. In addition, the Commissioners considered the personal experience of one of the Ethics Commissioners, who explained that he received special access (e.g., private telephone numbers and email addresses) for public officials after he engaged in campaign fundraising efforts to benefit these officials. In order to address the appearance of corruption that is created when lobbyists seemingly obtain unique access to elected officials, the Commission has included proposals that would require lobbyists to disclose their own campaign contributions, as well as their campaign fundraising activities.

It should be noted that, at one point during its deliberations, the Commission considered whether the appearance of corruption created by lobbyists engaging in campaign fundraising efforts to benefit the elected officials they may seek to influence was so great that a ban on fundraising by lobbyists was warranted. At that time, Jim Sutton (a lobbyist representing a group of clients) strenuously opposed the proposed ban, and promoted disclosure as a preferable alternative. In a letter dated July 13, 2006, Mr. Sutton asked the Ethics Commission to let "the sun shine on the fundraising activities of lobbyists," in lieu of a prohibition on fundraising by lobbyists. When the Commission ultimately decided to recommend disclosure of fundraising in lieu of an outright ban, Mr. Sutton clarified that his recommendation for transparency was only intended to cover those campaign contributions that a lobbyist personally delivers to a candidate. In the Commission's experience, this approach would easily enable lobbyists to circumvent disclosure rules by simply asking someone else to deliver the contributions on their behalf. In addition, this approach would ignore prevalent practices in campaign fundraising that involve the coding of contribution envelopes so that lobbyists receive credit for contributions sent directly by contributors to a candidate's campaign committee.

Both Los Angeles and San Francisco require lobbyists to disclose their fundraising activities. The Commission reviewed the laws in effect in these other cities and ultimately agreed with Mr. Sutton and others that the language used by these other jurisdictions could be improved upon to clarify the underlying intent. Accordingly, the Commission narrowly tailored the language in the relevant sections to require that lobbyists disclose (1) all contributions personally delivered by the lobbyist, and (2) all contributions for which the lobbyist "has identified himself or herself to a candidate or candidate's controlled committee as having some degree of responsibility for raising." In other words, if the lobbyist takes credit for providing a candidate with contributions, then the lobbyist should disclose the amount of those contributions on a quarterly disclosure report.

Some lobbyists have objected to this proposal and suggested that such a disclosure requirement should apply to all fundraisers and should be included in the City's campaign laws. Although the Commission may ultimately recommend such disclosure by candidate committees under the City's

campaign laws, it is the Commission's view that it is certainly appropriate to impose this requirement on paid lobbyists at this time because of the role that they play in influencing municipal decisions. The public has an undeniable interest in obtaining information regarding the different ways in which paid lobbyists obtain access and/or influence.

Disclosure of Campaign-Related Services:

During the course of its deliberations over the past fifteen months, the Commission was advised by a lobbyist that it is incorrect to assume that a special relationship exists between an elected official and his or her campaign consultants, and that it is often the case that elected officials are not fond of their respective campaign consultants for a variety of reasons. This information was contradicted by Councilmembers Madaffer and Frye at the Rules Committee meeting on October 25, 2006, at which time they suggested that the Commission consider a requirement that lobbyists disclose these prior relationships with elected officials.

The Commission staff subsequently conducted additional research and heard from various Council staffers that elected officials generally have a very good relationship with the campaign consultants who helped them gain elective office. By way of example, one Council staffer reported that Larry Remer had such a close relationship with former Councilmember Ralph Inzunza after he served as Councilmember Inzunza's campaign consultant that the Councilmember used a list of concerns prepared by Remer and printed on the letterhead of Remer's company (The Primacy Group) when the City Council was considering the creation of the Ethics Commission and the adoption of the Ethics Ordinance. Council staffers pointed out that it is typically only losing candidates who have complaints regarding the services provided by their consultants.

Disclosure of City Contracts:

As discussed above, the Commission received information over the past few months suggesting that lobbyists who have City contracts may develop special relationships with certain City Officials, and that such relationships should be disclosed if these lobbyists are also paid by private parties to influence the decisions made by City Officials. The rationale behind this recommendation is very similar to the rationale discussed above with respect to the disclosure of campaign-related services in that both disclosures would create a higher degree of transparency than currently exists.

Disclosure of City Officials Lobbied:

The Commission's rationale for this proposal is elementary: the most important piece of information the public needs regarding compensated efforts to influence the decisions of City Officials is the identity of the officials who were actually lobbied. Without this information, the public has no way of determining which officials may have been influenced by a lobbyist, and no way to rationally assess whether any acts of undue influence took place.

Several lobbyists recommended that lobbyists should be required to disclose the name of the department lobbied, but not the identity of the City Official. The Commissioners rejected this recommendation because they believe there is a very important distinction between meeting with an elected official and a Council staffer. The Commission also heard from several lobbyists that it would be too burdensome to identify every City Official present at a particular meeting. After further

consideration, the Commission modified its recommendations to require that lobbyists only disclose contacts with a select group of high level officials.

Some lobbyists also objected to disclosing the identity of City Officials they lobby, contending that that City Officials will avoid talking to them for fear of being "called out on a public report." The Commission staff has conferred with several City Officials on this issue, each of whom expressly deny that they would be concerned about being identified on a lobbyist disclosure report. They point out that they are frequently required to provide records and calendars in response to Public Records Act requests, and that their activities as government employees are continuously subject to public scrutiny. In fact, public access to the calendars of City Officials was the subject of an October 16, 2005, *Union Tribune* article (Attachment 6) that detailed the contacts various individuals had with City Officials over a specific period of time.

Gifts from Lobbyists:

The Commission has proposed a \$10 per month limit on gifts from lobbyists to City Officials. This proposal stems from the Commission's belief that, in the view of the public, City Officials may be influenced in the performance of their official duties if they receive an expensive meal or a ticket to an event from a lobbyist. The recent conviction of a United States Congressman in connection with excessive gifts from a lobbyist has reinforced the public's belief that gifts from lobbyists to government officials are indications of undue influence.

It is relevant to note that, as reflected in the comparison chart, other jurisdictions throughout California have similar gift limits, or have imposed an outright ban on gifts from lobbyists. Rather than ban all gifts outright and potentially expose City Officials to an enforcement action for simply accepting a cup of coffee from a lobbyist, the Commission ultimately settled on the \$10 limit to allow officials to accept gifts with a nominal value. It is also relevant to note that, throughout the course of the Commission's deliberations on the Lobbying Ordinance, the Commission did not hear any objections to this proposal (other than one that indicated the \$10 limit should be slightly higher as the cost of a hamburger has increased over time).

C. Level of Complexity

As discussed above, some lobbyists have contended that the Commission's proposals are too complicated and burdensome, and are far more complex than comparable laws in other jurisdictions. The Commission has made every effort to propose reforms that are clear and concise, and that will not impose unnecessary burdens on the regulated community. In addition, the Commission has conducted a thorough review of the laws in other jurisdictions in California and made every effort to streamline and simplify the corresponding provisions whenever possible. The following are examples of laws in place in other jurisdictions which the Commission rejected or modified because they appear to be too complicated or burdensome:

- Both San Francisco and Los Angeles require lobbyists to itemize the contributions obtained through fundraising activities. In other words, lobbyists must identify the name of each contributor, the date of each contribution, the amount of each contribution, the name of the candidate who benefited, etc. Los Angeles also requires lobbyists to provide specific information regarding written political fundraising solicitations (whether or not the

solicitations actually resulted in contributions). The Commission opted to propose a much simpler, more straightforward approach that still ensures that the public has sufficient information about a lobbyist's fundraising activities. The Commission's proposal would require lobbyists to disclose the date and description of the fundraising effort, and the total amount raised. In other words, the Commission's proposal does not require lobbyists to itemize each contribution and identify the name of each contributor.

- Los Angeles requires lobbyists to fill out a separate disclosure page for all contributions made by lobbyists "at the behest" of City Officials to other candidates, which includes contributions made at the direction of the lobbyist, or in cooperation, consultation, or coordination with the lobbyist. Similarly, lobbyists in Los Angeles must disclose donations made "at the behest" of City Officials to charitable, religious, and non-profit organizations. The Commission received input from a lobbyist with experience in Los Angeles who explained that the "at the behest" language had caused a great deal of confusion because it arguably requires lobbyists to disclose campaign contributions and charitable donations, even if they were only discussed with City Officials in passing. Accordingly, the Commission decided against recommending a similar provision.
- San Francisco requires lobbyists to disclose gifts of tickets or admissions to political fundraisers or fundraising events sponsored by a 501(c)(3) organization. The Commission decided against recommending a similar provision in San Diego's lobbying laws because it appears somewhat inconsistent with San Diego's Ethics Ordinance (and the state's Political Reform Act), which expressly exempt these types of tickets from the gift regulations.
- The State of California requires individual lobbyists, as well as the lobbying firms/lobbyist employers who employ them, to prepare separate disclosure reports. In many instances, the lobbyist must disclose the exact same information as his/her employer (e.g. activity expenses and campaign contributions). The Commission viewed this system as unnecessarily duplicative and burdensome, and opted instead to recommend that lobbying firms and organization lobbyists file the disclosure reports, which will include information supplied by the individual lobbyists.
- The State of California requires people who retain lobbying firms to file disclosure reports in the same time and manner as employers who have lobbyists working for them in-house. In other words, the clients of lobbying firms must also file disclosure reports and provide specific information regarding their payments to lobbying firms and their campaign contributions. The Commission has not recommended that the City of San Diego adopt similar requirements. The information disclosed by the clients appears to be duplicative of the information disclosed by the lobbyists with the exception of the clients' campaign contributions, which are disclosed by the recipient campaign committees.
- The State of California does not exempt government entities from its lobbying regulations. If a similar provision were enacted in San Diego, employees of the County of San Diego, the Port District, the City of Chula Vista, the City of National City, etc., would be required to register as lobbyists and disclose their activities if they met with City of San Diego officials regarding a municipal decision. The Commissioners opted to maintain the current exemption

for government agencies because they believe the public is primarily interested in receiving information regarding efforts by private companies to influence government decisions.

Although several lobbyists have generally criticized the Commission's proposed reforms as too complicated, these lobbyists have not provided the Commission with any information regarding a specific provision that is allegedly problematic. Instead, the Commission heard from members of the public that the proposed reforms are clear and comprehensible. The Commission first learned that some lobbyists believe the proposals are too complicated at the October 25, 2006, Rules Committee meeting. In particular, one lobbyist expressed his belief that the proposals are "more complicated than any lobbying law in any other city in California." In his October 23, 2006, letter to Council President Peters, lobbyist Jim Sutton cites the following as the basis for his belief that the Commission's proposals are too complex:

- Mr. Sutton describes the registration thresholds proposed by the Commission as "inconsistent" because they treat contract lobbyists differently than employees who lobby on behalf of their employers.

As demonstrated in the comparison chart prepared by the Commission (Attachment 4), other jurisdictions (e.g. Los Angeles, San Francisco, and the State of California) recognize the need to treat different types of lobbyists differently in terms of registration thresholds. Not only is San Diego not unique in terms of these "inconsistent" thresholds, but the Commission's current proposal is arguably far simpler than the current system or the alternatives. Instead of requiring lobbyists to register if they earn a specific amount of money in a certain time period or if they spend a certain amount of time lobbying in a certain period, the proposal would simply require all compensated contract lobbyists to register. There is no simpler way to impose a registration threshold. With respect to employees who lobby on behalf of their employers, they will need to register if they have ten lobbying contacts with high level City Officials in a sixty-day period. It is not a complex proposition to require lobbyists to count their number of lobbying contacts, and is clearly far less complicated than having them, or any enforcement agency, calculate the amount of compensation earned for lobbying activities.

- Mr. Sutton also references the fact that the Commission's proposals do not require homeowners associations and advocacy groups to register "simply because their members are not paid."

The Commission considered the request by Mr. Sutton and other lobbyists to regulate uncompensated advocacy, but ultimately concluded that this type of regulation would have the unintended effect of also regulating average constituents seeking to contact their elected officials. In other words, it is the Commission's view that regulating uncompensated lobbying activities would inevitably result in an overly-complex ordinance and a highly confused regulated community. Moreover, as evidenced in the comparison chart, the vast majority of other jurisdictions in California do not regulate uncompensated lobbyists.

- As a purportedly "more straightforward alternative," Mr. Sutton recommends that the City of San Diego adopt the state's lobbying disclosure laws because these laws have been in effect for thirty years and because the state's Fair Political Practices Commission [FPPC] has a staff of technical advisors.

As some Councilmembers may recall, Mr. Sutton made a very similar recommendation when the City Council was considering the Commission's proposed changes to the City's campaign laws in 2003 and 2004. Then, as now, the adoption of state law would have the net effect of removing the proposals that are most objectionable to Mr. Sutton and his clients. In this case, the state does not require lobbyists to identify the names of the officials they have lobbied, nor does it require lobbyists to disclose campaign fundraising activities. As reflected in the comparison charts, the majority of the other provisions in state law are identical or substantially similar to those proposed by the Commission. Moreover, as discussed above, the Commission has not recommended several provisions that currently exist in state law because they believe that they are complicated, duplicative, and/or burdensome.

Finally, it is important to mention that the state's lobbying laws apply only to state lobbyists. It is highly unlikely that the FPPC would use its limited resources to provide advice to lobbyists whose local activities are not under its jurisdiction. In other words, "adopting" state law would not bring local lobbying activities under the purview of the FPPC. Instead, it would only impose on local lobbyists a set of laws expressly tailored for the unique structure of the state.

In order to highlight the relative simplicity and straightforward nature of the Commission's proposed reforms, the Commission staff has prepared draft Fact Sheets entitled "Am I a Lobbyist?" and "Exceptions to the Lobbying Ordinance" (Attachment 3).

D. Legal Analysis

The Commission's General Counsel, Cristie McGuire, has conducted a thorough and ongoing legal analysis of the proposed amendments to the City's lobbying laws, and is confident that they would survive any legal challenges. In addition to the customary legal research and analysis that is typically performed by the Commission's General Counsel when the Commission proposes legislative reforms, Ms. McGuire prepared a "primer" (Attachment 5) on the constitutional principles involved in developing lobbying regulations. The Commission used this primer as a guideline throughout its deliberations on the proposed Lobbying Ordinance.

This primer addresses a variety of Court cases that explain how different types of government regulation are subject to different types of legal scrutiny. Laws that incidentally burden a First Amendment right, such as registration, disclosure, and gift provisions, are not direct limitations on the right to petition the government, and are therefore subject to a relatively low level of judicial scrutiny. In order to enact such laws, a government entity need only demonstrate that there is a reasonable or rational basis for the law. As explained in Ms. McGuire's memo, this burden is met if it can be shown that the law was reasonably calculated to achieve its goal. On the other hand, laws that prohibit or restrict constitutionally-protected activities (such as a ban on campaign contributions by lobbyists) are subject to a higher judicial standard known as "strict scrutiny."

In the opinion of the Commission's General Counsel, the proposed reforms do not substantially interfere with the ability of a lobbyist to exercise his or her First Amendment rights. Because there is a rational basis for each one of the provisions, and because each provision has been crafted to achieve a specific goal, Ms. McGuire is confident that the proposals do not impermissibly infringe on

constitutionally protected activities. Similarly, because the proposals do not include outright prohibitions or restrictions on First Amendment activities, Ms. McGuire does not believe they would be subject to a "strict scrutiny" standard of judicial review. Accordingly, it is Ms. McGuire's opinion that the City is not required to demonstrate a "compelling governmental interest" by documenting the actual or apparent corruption that would be corrected by each of the proposals. (It is important to note that Ms. McGuire's memo addresses a specific case in which the California Supreme Court found that a limit on gifts from lobbyists was not subject to strict scrutiny because it was not a direct limitation on the right to petition for redress of grievances.)

In light of the extensive legal analysis performed by the Commission staff, it is difficult to understand any basis for an assertion that there has been "no legal analysis" of the Commission's proposals. Although the Commission will of course defer to the Office of the City Attorney to ultimately determine whether the proposed ordinance is "legal," the Commission is confident that the City has sufficiently demonstrated the need for the proposed reforms, and that the proposed amendments have been drafted in a manner that is reasonably calculated to achieve the Commission's articulated goals.

E. Empirical Evidence

Even though the City is not required to provide evidence of corruption or the appearance of corruption to justify the proposed amendments, such evidence certainly exists in abundance. The Commission was, therefore, surprised to hear a lobbyist at the February 2007 Commission meeting express his view that there is no empirical evidence to support the changes recommended by the Commission. During the ensuing Commission discussion, one of the Ethics Commissioners pointed out that a court reviewing the proposed changes might indeed distinguish between "empirical" evidence and "anecdotal" evidence. The Ethics Commission has, therefore, compiled a body of empirical evidence that supports the need for the reforms proposed by the Commission. The following are examples of this empirical evidence, but are by no means exhaustive:

- Three former City councilmembers were indicted following a federal corruption probe that identified Lance Malone as a lobbyist who had obtained special access to the councilmembers through campaign fundraising. The councilmembers received a total of \$23,150 in "bundled" campaign contributions through Malone, and in the aggregate the former elected officials and their staffs had at total of 346 phone calls over two years with this lobbyist. Although appeals are still pending on this matter, the facts surrounding the indictments created an undeniable appearance of corruption between a lobbyist and City officials. (Attachment 12)
- In 2005, former U.S. Representative Duke Cunningham (whose district included parts of the City of San Diego) resigned from office and pled guilty to fraud and bribery charges stemming from his relationship with a lobbyist for a governmental contractor. (Attachment 13)
- *New York Times*, February 11, 2007 (Attachment 7). United States Senator Lindsey Graham was quoted as saying, "I don't see any problem with having events where private individuals who give you money can talk to you." The article also mentions an arrangement set up by Congressman Eric Cantor, who invited lobbyists to join him for a cup of coffee at the local Starbucks in exchange for a \$2,500 contribution.

- *The Bankrollers: Lobbyists' Payments to the Lawmakers they Court, 1998 – 2006*, Public Citizen, May 2006 (Attachment 8). This report identifies the influence obtained by lobbyists through campaign contributions and campaign fundraising. The report details the access and influence of the top ten lobbyist-contributors on a federal level by identifying the elected officials who benefited from the contributions and documenting their subsequent actions (e.g. voting on specific matters, appropriations, earmarking, etc.) in support of the lobbyists' clients.

One example cited in the report involves Stewart Van Scoyoc, a federally registered lobbyist. According to the data compiled in this report, the top ten recipients of Van Scoyoc's campaign contributions serve on the House or Senate Appropriations Committees. In turn, these elected officials have rewarded Van Scoyoc's clients in various forms. For example, the Senate Appropriations Committee earmarked nearly \$150 million for the University of Alabama during the time that Senator Richard Shelby, a beneficiary of Van Scoyoc's campaign contributions, was Chair of the Committee (the University paid Van Scoyoc nearly \$1.5 million in lobbying fees).

Another example involving Van Scoyoc's fundraising and corresponding influence involves Reveal Imaging Technologies, a small Massachusetts start-up company that hired Van Scoyoc in June of 2003 and received a \$2.4 million grant from the Transportation Security Administration [TSA] three months later. In October of 2003, Van Scoyoc hosted a fundraiser for Representative Harold Rogers, the Chair of the Appropriations Homeland Security Subcommittee. This fundraiser netted contributions from Reveal executives totaling \$14,000. Over time, Rogers ultimately received \$122,111 from Reveal executives and associates and by March of 2006, Reveal had received \$28.1 million in orders from the TSA.

- *Measuring Corruption: Do Campaign Contributions and Lobbying Corrupt?* Gajan Retnasaba, Harvard Law School, 2005, Paper 737 (Attachment 9). This academic study examines the appearance of corruption with respect to underwriters of municipal bonds. As a result of the study, the author concludes that an appearance of corruption was created when politicians were able to reward underwriters who had benefited them (via campaign contributions) with lucrative underwriting contracts. The author further notes that when the Municipal Securities Rulemaking Board prohibited underwriters and their employees from conducting business in states where they had made campaign contributions in the past two years, the underwriters turned to lobbyists to make campaign contributions and obtain influence on their behalf.
- *Dallas Morning News*, July 7, 2005 (Attachment 10). This news story refers to court documents indicating that representatives of Westar Energy were told by their company's lobbyist, Richard Bornemann, that a \$25,000 contribution to Representative Tom DeLay would give them access to DeLay, who was the U.S. House majority leader at the time. As a result of the contribution, two Westar executives attended a golf outing with DeLay.
- *Washington Post*, June 10, 2003 (Attachment 11). This story details the efforts of lobbyist Richard Bornemann on behalf of Westar Energy. In particular, Bornemann reportedly attended at least seven Washington fundraisers and brought checks from Westar executives. Bornemann subsequently set up a meeting between Congressman Joe Barton and Westar executives, shortly after which Congressman Barton offered an amendment to exempt Westar

from a federal energy regulation. The story also mentions emails from Westar executives discussing their belief that their \$56,500 in campaign contributions should get Westar a "seat at the table" during the negotiations over the energy bill.

- *McConnell v. Federal Election Commission* 540 U.S. 93 (2003): In this landmark United States Supreme Court case, the Court considered a host of empirical evidence cited to justify the imposition of contribution limits on political parties, including the following:

Declaration of lobbyist Robert Rozen, partner, Ernst & Young: "You are doing a favor for somebody by making a large donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone – that is write a larger check – and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings." *McConnell*, 540 U.S. 93, 147 (2003).

Declaration of former United States Senator Alan Simpson: "Too often, Members' first thought is not what is right or what they believe, but how it will affect fundraising. Who, after all, can seriously contend that a \$100,000 donation does not alter the way one thinks about--and quite possibly votes on--an issue? . . . When you don't pay the piper that finances your campaigns, you will never get any more money from that piper. Since money is the mother's milk of politics, you never want to be in that situation." *McConnell*, 540 U.S. at 149.

Declaration of former United States Senator Warren Rudman: "Special interests who give large amounts of soft money to political parties do in fact achieve their objectives. They do get special access. Sitting Senators and House Members have limited amounts of time, but they make time available in their schedules to meet with representatives of business and unions and wealthy individuals who gave large sums to their parties. These are not idle chit-chats about the philosophy of democracy. . . . Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way." *McConnell*, 540 U.S. at 151.

Declaration of Gerald Greenwald, United Airlines: "Business and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute (enough), competing interests who do contribute generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union. . . . Though a soft money check might be made out to a political party, labor and business leaders know that those checks open the doors of the offices of individual and important Members of Congress and the Administration. . . . Labor and business leaders believe--based on experience and with good reason--that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties. *McConnell*, 540 U.S. at 125, n13.

The *McConnell* court concluded that "it is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude." *McConnell*, 540 U.S. at 145.

In addition, the *McConnell* court determined that actual evidence of corruption is not required to impose contribution limits and thereby restrict activities protected by the First Amendment: "More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, and the appearance of such influence.' Many of the 'deeply disturbing examples' of corruption cited by this Court in *Buckley*, 424 U. S., at 27, to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." *McConnell*, 540 U.S. at 150 (citations omitted).

Although some of the above-cited evidence pertains to large campaign contributions and does not specifically concern lobbying, the evidence is clearly applicable to campaign fundraising, which is an activity that is common to both lobbying and campaign finance. In addition, because the City of San Diego imposes limits on contributions to candidates, fundraising is one of the main avenues through which someone may demonstrate direct support for a candidate.

It should also be noted that the United States Supreme Court has held that in establishing the basis for the imposition of legislative reforms, it is entirely appropriate for the City of San Diego to consider evidence of corruption and the appearance of corruption that exists in other jurisdictions. "The First Amendment does not require a city, before enacting . . . an ordinance, to conduct new studies or produce evidence independent of that already generated by other cities, so long as whatever evidence the city relies upon is reasonably believed to be relevant to the problem that the city addresses." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 394 (2000), citing *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 51-52 (1986).

F. Public Perception

During the course of the Commission's work on the lobbying laws over the past fifteen months, one lobbyist suggested that there is no evidence that the public is concerned about lobbying or that the public is in favor of the changes proposed by the Commission. This opinion was based on the fact that few members of the public attended the Commission meetings, which were more heavily attended by lobbyists. The Ethics Commission disagrees with this assessment and does not believe it is appropriate to equate low attendance with lack of interest. Research conducted by Commission staff indicates that the public is extremely concerned about corruption and the appearance of corruption when it comes to lobbyists and the access they have to elected officials, as evidenced by the following polls:

- ABC News Poll (January 5 – 8, 2006):

Sixty-seven percent of those polled would ban lobbyists from making campaign contributions to Congress.

Fifty-four percent of those polled would ban lobbyists from organizing campaign fundraisers for congressional candidates.

Ninety percent of those polled would ban lobbyists from giving Congress gifts, trips, or other things of value.

- Fox News / Opinion Dynamics Poll (January 10 – 11, 2006):

Sixty-five percent of those polled believe that most elected officials in Washington make policy decisions or take actions as a direct result of money they receive from major campaign contributors.

- CBS / New York Times Poll (January 20 – 25, 2006):

Seventy-seven percent of people polled think that recent reports of lobbyists bribing members of Congress is “the way things work” in Congress.

- Pew Research Center (February 1 – 5, 2006):

Eighty-one percent of people polled think recent reports of lobbyists bribing members of Congress reflect behavior that is “common” in Congress.

- Pew Research Center (April 7 – 16, 2006):

Forty-six percent of people polled are “very concerned” about the influence of lobbyists and special interests.

Twenty-nine percent of people polled are “somewhat concerned” about the influence of lobbyists and special interests.

Seventy-six percent of people polled are in favor of stricter limits on gifts from lobbyists.

The polling data is attached for your review (Attachment 14).

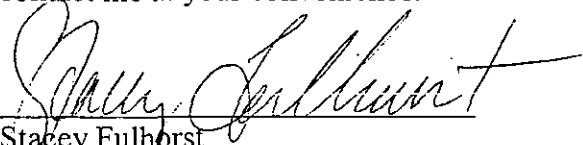
G. Conclusion

Throughout the past fifteen months of deliberations, the Commission has received extremely valuable input from lobbyists and members of the public regarding a variety of proposals under consideration. As reflected in letters to the Commission (Attachment 15) and minutes of the Commission meetings (available at www.sandiego.gov/ethics), each recommendation was seriously considered and most were incorporated into the Commission’s proposals. The input the Commission received was instrumental in terms of preparing a draft ordinance that is straightforward and comprehensible for the regulated community, and yet also addresses important public policy considerations.

As explained in detail above, the Commission does not believe that there is any legitimate basis to assert that the Commission’s proposed reforms are “too complicated,” or are a “solution in search of a problem.” Instead, if adopted, these reforms will dramatically improve what is currently a largely ineffective ordinance. They will ensure that people who are compensated to influence municipal decisions are required to register as lobbyists, and they will further ensure that the Ethics Commission can effectively enforce the law when such individuals fail to register.

The proposed reforms will also require lobbyists to disclose more information than is presently required, which will in turn create more transparency and combat the appearance of corruption that surrounds lobbying and related activities. Although some lobbyists may object to the additional disclosure requirements, the Commission believes that this increased level of transparency will be critical to assuring the public that there is nothing secretive or sinister about the lobbying activities that take place in the City of San Diego every day. As registered lobbyist Michael McDade told the *Union-Tribune* in October of 2005: "People who are doing a legitimate job of presenting information to government officials should not have to worry about whether the public knows if they've talked to them."

For your convenience, we have provided "clean" and "strike-out" versions reflecting the proposed changes to the Lobbying Ordinance (Attachments 1 and 2). Note that we have added text boxes in the left margin of the "clean" version to identify the substantive changes made since the October 25, 2006, Rules Committee meeting. We look forward to discussing these proposed changes with you at the Rules Committee meeting on March 7, 2007. If you have any questions in the meantime, please contact me at your convenience.


Stacey Fulhorst
Executive Director

Attachments

cc: Catherine Bradley, Chief Deputy City Attorney
Kris Michel, Deputy Chief Community & Legislative Services

INDEX TO ATTACHMENTS

Ethics Commission Executive Director Memorandum: Proposed
Amendments to the Municipal Lobbying Ordinance (February 21, 2007)

1. Draft Revisions to Lobbying Ordinance (clean version, dated 2/15/07)
2. Draft Revisions to Lobbying Ordinance (strike-out version, dated 2/15/07)
3. Draft Fact Sheets entitled "Am I a Lobbyist?" and "Exceptions to the Lobbying Ordinance"
4. Comparison chart reflecting lobbying laws in other jurisdictions
5. Memorandum from General Counsel Cristie C. McGuire dated June 8, 2006
6. Kelly Thornton, "A Matter of Influence," *Union Tribune*, October 16, 2005
7. David Kirkpatrick, "Congress Finds Ways to Avoid Lobbyist Limits," *New York Times*, February 11, 2007
8. *The Bankrollers: Lobbyists' Payments to the Lawmakers they Court, 1998 – 2006*, Public Citizen, May 2006
9. *Measuring Corruption: Do Campaign Contributions and Lobbying Corrupt?* Gajan Retnasaba, Harvard Law School, 2005, Paper 737
10. Wayne Slater, "Donation Brought Access to DeLay," *Dallas Morning News*, July 7, 2005
11. Juliet Eilperin, "Westar Lobbyist's Role Detailed," *Washington Post*, June 10, 2003
12. Kelly Thornton, "More Wiretaps Played for Jurors," *Union-Tribune*, May 27, 2005; Kelly Thornton, "Prosecution Tells Jurors it was Bribery," *Union-Tribune*, July 7, 2005
13. Plea Agreement in *United States of America v. Randall Harold Cunningham*, United States District Court, case no. 05cr2137-LAB, filed November 28, 2005
14. Poll results – ABC News/Washington Post (Jan. 2006); Fox News (Jan. 2006); CBS News/New York Times (Jan 2006); Pew Research Center for the People and the Press (Feb. 2006); Pew Research Center for the People and the Press (Apr. 2006)
15. Written submissions received by the Ethics Commission from November 2005 through February 2007

ALTERNATIVE A

(Adds the following four positions to the definition of "City Official": Council Representative, Management Assistant to City Manager, Budget/Legislative Analyst, and Financial Operations Manager)

§27.4002 Definitions

....

City Official means any of the following officers or employees of the *City*, which includes all *City* agencies: elected officeholder; Council staff member; Council Committee Consultant; Council Representative; Assistant City Attorney; Deputy City Attorney; General Counsel; Chief; Assistant Chief; Deputy Chief; Assistant Deputy Chief; City Manager; Assistant City Manager; Deputy City Manager; Management Assistant to City Manager; Treasurer; Auditor and Comptroller; Independent Budget Analyst; Budget/Legislative Analyst; Financial Operations Manager; City Clerk; Labor Relations Manager; Retirement Administrator; Director; Assistant Director; Deputy Director; Assistant Deputy Director; Chief Executive Officer; Chief Operating Officer; Chief Financial Officer; President; and Vice-President. *City Official* also means any member of a *City Board*.

....



"Clean Copy"

Revision date:
February 15, 2007

LOBBYING ORDINANCE REVIEW

— DRAFT REVISIONS —

(Proposed Effective Date: January 1, 2008)

Article 7: Elections, Campaign Finance and Lobbying

Division 40: Municipal Lobbying

§27.4001 Purpose and Intent

It is the purpose and intent of the City Council of the City of San Diego in enacting this division to: ensure that the citizens of the City of San Diego have access to information about persons who attempt to influence decisions of City government through the use of paid lobbyists; establish clear and unambiguous registration and disclosure requirements for lobbyists in order to provide the public with relevant information regarding the financing of lobbyists and the full range of lobbying activities; prohibit registered lobbyists from exerting improper influence over City Officials or from placing City Officials under personal obligation to lobbyists or their clients; promote transparency concerning attempts to influence municipal decisions; avoid corruption and the appearance of corruption in the City's decision-making processes; regulate lobbying activities in a manner that does not discourage or prohibit the exercise of constitutional rights; reinforce public trust in the integrity of local government; and ensure that this division is vigorously enforced.

§27.4002 Definitions

All defined terms in this division appear in italics. Unless the context otherwise indicates, the defined terms have the meanings set forth below.

Activity Expense means any *payment* made to, or on behalf of, any *City Official* or any member of a *City Official's immediate family*, by a *lobbyist*, *lobbying firm*, or *organization lobbyist*. *Activity expenses* include *gifts*, *meals*, *consulting fees*, *salaries*, and any other form of *compensation* to a *City Official* or a *City Official's immediate family*, but do not include campaign contributions.

Agent means a *person* who acts on behalf of any other *person*. *Agent* includes a *person* who acts on behalf of a *lobbyist*.

Candidate means any individual who is holding, or seeking to hold, elective *City* office.

City means the City of San Diego or any of its organizational subdivisions, agencies, offices, or boards.

City Board includes the boards of directors of all *City* agencies, and any board, commission, committee, or task force of the *City* established by action of the *City* Council under authority of the *City* Charter, Municipal Code, or Council resolution, whose members are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

"City
Official"
limited to
only the
positions
listed

City Official means any of the following officers or employees of the *City*, which includes all *City* agencies: elected officeholder; Council staff member; Council Committee Consultant; Assistant City Attorney; Deputy City Attorney; General Counsel; Chief; Assistant Chief; Deputy Chief; Assistant Deputy Chief; City Manager; Assistant City Manager; Deputy City Manager; Treasurer; Auditor and Comptroller; Independent Budget Analyst; City Clerk; Labor Relations Manager; Retirement Administrator; Director; Assistant Director; Deputy Director; Assistant Deputy Director; Chief Executive Officer; Chief Operating Officer; Chief Financial Officer; President; and Vice-President. *City Official* also means any member of a *City Board*.

Client means any *person* who provides *compensation* to a *lobbying firm* for the purpose of *influencing a municipal decision*, and any *person* on whose behalf *lobbying activities* are performed by a *lobbying firm*.

contingency
language
added

(a) *Client* includes any *person* that retains a *lobbying firm* to engage in *lobbying activities* pursuant to a contingency agreement.

clarifies
when a
member of
a coalition is
a "client"

(b) If a coalition or membership organization is a *client*, a member of that coalition or organization is not also a *client* unless that member paid, or agreed to pay, at least \$1,000 to the *lobbying firm* for *lobbying activities* performed on behalf of the coalition or organization with regard to a specific *municipal decision*. For purposes of this subsection, if a member is an individual, payments by that individual's *immediate family* are attributable to that individual member.

Compensation means any economic consideration for services rendered or to be rendered. *Compensation* does not include reimbursement for *travel expenses*.

Contact means the act of engaging in a *direct communication* with a *City Official* for the purpose of *influencing a municipal decision*. For purposes of this definition:

- (a) each discussion with a *City Official* regarding a different *municipal decision* is considered a separate *contact*;
- (b) each discussion regarding a *municipal decision* with a *City Official* and members of that official's immediate staff, or with multiple immediate staff members of the same *City Official*, is considered a separate *contact*;
- (c) each substantially similar communication, regardless of whether it is made by letter, e-mail, or facsimile, pertaining to one or more *municipal decisions* to one or more *City Officials* is considered a separate *contact* for each *municipal decision*.

Direct communication means:

- (a) talking to (either by telephone or in person); or

- (b) corresponding with (either in writing or by electronic transmission or facsimile machine).

Enforcement Authority means the City of San Diego Ethics Commission. Nothing in this article limits the authority of the City Attorney, any law enforcement agency, or any prosecuting attorney to enforce the provisions of this article under any circumstances where the City Attorney, law enforcement agency, or prosecuting attorney otherwise has lawful authority to do so.

changed
from 90
days to a
calendar
quarter

Expenditure lobbyist means any *person* who makes expenditures for public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, studies, or similar activities designed to influence one or more *municipal decisions*, to the extent that such *payments* total \$5,000 or more within a calendar quarter. An expenditure is made on the date a *payment* is made or on the date consideration, if any, is received by the *expenditure lobbyist*, whichever is earlier. Expenditures for *lobbying activities* reported by a *lobbying firm* or *organization lobbyist* on a quarterly disclosure report shall not be considered for purposes of calculating the \$5,000 threshold.

Fundraising activity means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$1,000 or more in contributions to a *candidate* or to a *candidate's* controlled committee, or (b) identifying oneself to a *candidate* or a *candidate's* controlled committee as having any degree of responsibility for \$1,000 or more in contributions received as a result of that solicitation.

Gift means any *payment* that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. Any *person*, other than a defendant in a criminal action, who claims that a *payment* is not a *gift* by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. *Gifts* are subject to the exceptions set forth in Municipal Code section 27.3525.

Immediate family means an individual's spouse or registered domestic partner, and any dependent children.

Influencing a municipal decision means affecting or attempting to affect any action by a *City Official* on one or more *municipal decisions* by any method, including promoting, supporting, opposing, or seeking to modify or delay such action. *Influencing a municipal decision* also includes providing information, statistics, analysis, or studies to a *City Official*.

Lobbying means *direct communication* with a *City Official* for the purpose of *influencing a municipal decision* on behalf of any other *person*.

identifies
the activities
that fall
under scope
of ordinance

Lobbying activities means the following and similar activities that are related to an attempt to *influence a municipal decision*: (a) *lobbying*; (b) monitoring *municipal decisions*; (c) preparing testimony and presentations; (d) engaging in research, investigation, and fact-gathering; (e) attending hearings; (f) communicating with clients; and (g) waiting to meet with *City Officials*.

Lobbying entity means any *lobbying firm*, *organization lobbyist*, or *expenditure lobbyist*.

Lobbying firm means any entity that receives or becomes entitled to receive any amount of monetary or in-kind *compensation* to engage in *lobbying activities* on behalf of any other *person*, and that has at least one *direct communication* with a *City Official* for the purpose of *influencing a municipal decision*. A *lobbying firm* includes any entity that engages in *lobbying activities* on behalf of another *person* pursuant to a contingency fee agreement.

Lobbyist means any individual who engages in *lobbying activities* on behalf of a *client* or an *organization lobbyist*.

Ministerial action means any action that does not require a *City Official* to exercise discretion concerning any outcome or course of action. A *ministerial action* includes, but is not limited to, decisions on private land development made pursuant to Process 1 as described in Chapter 11 of the Municipal Code.

Municipal decision includes:

- (a) the drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and
- (b) the amendment of any ordinance or resolution; and
- (c) a report by a *City Official* to the *City Council* or a *City Council Committee*; and
- (d) contracts; and
- (e) quasi-judicial decisions, including:
 - (1) any decision on a land development permit, map or other matter decided pursuant to Process 2 through 5 as described in Chapter 11 of this Municipal Code; and
 - (2) any grant of, denial of, modification to, or revocation of a permit or license under Chapter 1 through 10 of this Municipal Code; and
 - (3) any declaration of debarment as described in Chapter 2, Article 2, Division 8, of this Municipal Code; and
- (f) any other decision of the *City Council* or a *City Board*.

Organization lobbyist means any business or organization, including any non-profit entity, that provides *compensation* to one or more employees who have a total of 10 or more separate *contacts* with one or more *City Officials* within 60 consecutive calendar days for purposes of *lobbying* on behalf of the business or organization. An employee of any parent or subsidiary of the business or organization is considered an employee of that entity. "Employees" of an *organization lobbyist* include the owners, officers, and employees of the business or organization.

Payment means a payment, distribution, transfer, loan, advance, deposit, *gift* or other rendering of money, property, services, or anything else of value, whether tangible or intangible.

Person means any individual, business entity, trust, corporation, association, committee, or any other organization or group of *persons* acting in concert.

Public hearing means any meeting as defined by the Ralph M. Brown Act where a public record is kept of who spoke and who was represented by a *lobbyist* testifying at that hearing.

Public official means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies; the State of California; the *City*; any political subdivision of the State, including counties and districts; or any public corporation, agency, or commission.

Travel expenses means reasonable expenses for transportation plus a reasonable sum for food and lodging.

§27.4004

Exceptions

The following *persons* and activities are exempt from the requirements of this division:

- (a) a *public official* acting in his or her official capacity and any government employee acting within the scope of his or her employment;
- (b) any newspaper or other regularly published periodical, radio station, or television station (including any individual who owns, publishes, or is employed by any such newspaper, periodical, radio station, or television station) that in the ordinary course of business publishes news items, editorials, or other comments or paid advertisements that directly or indirectly urge action on a *municipal decision*, if such newspaper, periodical, radio station, television station, or individual engages in no other activities to *influence a municipal decision*;
- (c) any *person* whose sole activity includes one or more of the following, unless the activity involves *direct communication* with a member of the *City Council* or a member of the *City Council*'s immediate staff:
 - (1) to submit a bid on a competitively bid contract;
 - (2) to submit a written response to a request for proposals or qualifications;
 - (3) to participate in an oral interview for a request for proposals or qualifications; or,
 - (4) to negotiate the terms of a contract or agreement with the *City*, once the *City* has authorized either by action of the *City Council*, *City Manager*, or voters, entering an agreement with that *person* whether that *person* has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.

- (5) to communicate in connection with the administration of an existing contract between the *person* and the *City*.
- (d) any request for advice regarding, or for an interpretation of, laws, regulations, *City* approvals, or policies;
- (e) any communication by an attorney with regard to his or her representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the *City*, or *City* agent, officer, or employee;
- (f) any communication concerning a *ministerial action*;
- (g) any communication concerning the establishment, amendment, administration, implementation, or interpretation of a collective bargaining agreement or memorandum of understanding between the *City* and a recognized employee organization, or concerning a proceeding before the Civil Service Commission;
- (h) any communication concerning management decisions regarding the working conditions of represented employees that clearly relate to the terms of collective bargaining agreements or memoranda of understanding pursuant to (g) above;
- (i) solely responding to questions from any *City Official*, or providing oral or written information in response to a subpoena or as otherwise compelled by law;
- (j) solely appearing as a speaker at, or providing written statements that become part of the record of, a *public hearing*;
- (k) any direct response to an enforcement proceeding with the *City*.
- (l) the provision of purely technical data or analysis to a *City Official* by an expert, so long as the expert does not otherwise engage in *direct communication* for the purpose of *influencing a municipal decision*. This subsection is intended to be interpreted in a manner consistent with title 2, section 18239(d)(3)(A) of the California Code of Regulations.
- (m) the publishing of any information on an Internet website that is accessible to the general public.

§27.4006 Activity Expense on Behalf of Client

An *activity expense* shall be considered to be made on behalf of a *client* if the *client* requests, authorizes, or reimburses the expense.

§27.4007 Registration Required

- (a) Every *lobbying firm* and *organization lobbyist* is required to register with the *City Clerk* no later than ten calendar days after qualifying as a *lobbying firm* or *organization lobbyist*.
- (b) *Lobbying firms* and *organization lobbyists* shall file their registration forms with the *City Clerk*, using forms provided by the *City Clerk*.

- (c) Nothing in this division precludes an entity from registering as a *lobbying firm* or *organization lobbyist* prior to qualifying as such.
- (d) An entity that registers as a *lobbying firm* or *organization lobbyist* retains that status through January 5 of the following calendar year unless and until it terminates that status in accordance with section 27.4022. An entity that continues to qualify as a *lobbying firm* or *organization lobbyist* on January 5 shall renew that registration on or before January 15 of each year.

§27.4009 Contents of Registration Form

- (a) Every *lobbying firm* shall file with the City Clerk a registration form that contains the following information:
 - (1) the *lobbying firm's* name, address, and telephone number.
 - (2) the name of each individual employed by the *lobbying firm*:
 - (A) who has engaged in *lobbying* the City within the previous 30 calendar days, or
 - (B) who the *lobbying firm* reasonably anticipates will engage in *lobbying* the City in the future.
 - (3) a listing of all owners, officers, and *lobbyists* of the *lobbying firm* who engaged in *fundraising activities* for a current elected City Official during the two year period preceding the filing date, along with the name of each applicable City Official. Notwithstanding the requirements of this subsection, *lobbying firms* have no obligation to report *fundraising activities* that took place prior to January 1, 2007.
 - (4) a listing of all owners, officers, and *lobbyists* of the *lobbying firm* who personally provided compensated campaign-related services to a current elected City Official during the two year period preceding the filing date, along with the name of each applicable City Official. Notwithstanding the requirements of this subsection, *lobbying firms* have no obligation to report campaign-related services that were rendered prior to January 1, 2007.
 - (5) a listing of all owners, officers, and *lobbyists* of the *lobbying firm* who personally provided compensated services under a contract with the City during the two year period preceding the filing date, along with the name of the City department, agency, or board for which the services were provided. Notwithstanding the requirements of this subsection, *lobbying firms* have no obligation to report compensated services provided prior to January 1, 2007.
 - (6) for each *client* for whom the *lobbying firm* engages in *lobbying activities*:

changed from 4 years to 2 years; added 'grandfather' clause

adds disclosure requirement for paid campaign services

adds disclosure requirement for City contract services

adds disclosure requirement for coalition members that qualify as "clients"

- (A) the *client's* name, business or mailing address, and telephone number; in addition, if the *client* is a coalition or membership organization, include

the name, business or mailing address, and telephone number of each member who also qualifies as a *client* under section 27.4002.

- (B) a specific description of each *client* in sufficient detail to inform the public of the nature and purpose of the *client's* business; and,
 - (C) the specific *municipal decision(s)* for which the *lobbying firm* was retained to represent the *client*, or a description of the type(s) of *municipal decision(s)* for which the *lobbying firm* was retained to represent the *client*, and the outcome(s) sought by the *client*;
- (7) statements by a duly authorized owner or officer of the *lobbying firm* that he or she:
- (A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,
 - (B) reviewed the contents of the registration form and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (8) the printed name, title, and original signature of the individual making the statements required by subsection (a)(7).
- (9) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.
- (b) Every *organization lobbyist* shall file with the *City Clerk* a registration form that contains the following information:
- (1) the *organization lobbyist's* name, address, and telephone number.
 - (2) a specific description of the *organization lobbyist* in sufficient detail to inform the public of the nature and purpose of its business.
 - (3) the name of each owner, officer, and employee of the *organization lobbyist* who is authorized to *lobby City Officials* on behalf of the *organization lobbyist*.
 - (4) the total number of *lobbying contacts* with *City Officials* made on behalf of the *organization lobbyist* by the *organization lobbyist's* owners, officers, or employees during the 60 calendar days preceding the filing date.
 - (5) a description of each *municipal decision* the *organization lobbyist* has sought to influence during the 60 calendar days preceding the filing date; and the outcome sought by the *organization lobbyist*.
 - (6) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who engaged in *fundraising activities* for a current elected *City Official* during the two year period preceding the filing date, along with the

changed from
4 years to 2
years; added
'grandfather'
clause

name of each applicable *City Official*. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report *fundraising activities* that took place prior to January 1, 2007.

adds
disclosure
requirement
for paid
campaign
services

- (7) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who personally provided compensated campaign-related services to a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report campaign-related services that were rendered prior to January 1, 2007.

adds
disclosure
requirement
for City
contract
services

- (8) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who personally provided compensated services under a contract with the *City* during the two year period preceding the filing date, along with the name of the *City* department, agency, or *board* for which the services were provided. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report compensated services provided prior to January 1, 2007.

- (9) statements by a duly authorized owner or officer of the *organization lobbyist* that he or she:

- (A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,
- (B) reviewed the contents of the registration form and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.

- (10) the printed name, title, and original signature of the individual making the statements required by subsection (b)(9).

- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.

§27.4010 Registration Fees

- (a) At the time a *lobbying firm* registers pursuant to section 27.4007, the *lobbying firm* shall pay an annual registration fee based on the number of *lobbyists* identified on its registration form, plus an annual *client* registration fee for each *client* identified on the registration form.
- (1) A *lobbying firm* that initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to section 27.4007 shall pay prorated registration fees.
- (2) When a *lobbying firm* adds a *lobbyist* subsequent to the *lobbying firm's* initial registration, the *lobbying firm* shall pay an additional *lobbyist* registration fee when filing its amended registration form as required by section 27.4012.

- (3) When a *lobbying firm* acquires a *client* subsequent to the *lobbying firm's* initial registration, the *lobbying firm* shall pay an additional *client* registration fee when filing its amended registration form as required by section 27.4012.
- (4) For the purpose of determining *client* registration fees, a coalition or membership organization shall be considered a single *client*, even if one or more of its members also qualify as *clients* under section 27.4002.
- (5) Registration fees may be paid or reimbursed by a *client*.
- (b) At the time an *organization lobbyist* registers pursuant to section 27.4007, the *organization lobbyist* shall pay an annual *organization lobbyist* registration fee.
 - (1) An *organization lobbyist* that initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to section 27.4007 shall pay a prorated registration fee.
 - (2) An *organization lobbyist* shall pay a single registration fee regardless of the number of its owners, officers, and employees who engage in *lobbying activities*.
- (c) All registration fees shall be set by the *City Council* based upon the recommendation of the *City Clerk*. The *City Clerk* shall from time to time recommend fee amounts to the *City Council* that reflect, but do not exceed, the *City's* costs of administering the filing requirements set forth in this division. A copy of the fee schedule shall be filed in the rate book of fees on file in the office of the *City Clerk*.

§27.4012 Amendments to Registration Form

Within ten calendar days of any change in the information required on their registration forms, *lobbying firms* and *organization lobbyists* shall file amendments to their registration forms, disclosing the change in information.

§27.4015 Quarterly Disclosure Report Required

- (a) *Lobbying firms* and *organization lobbyists* shall file quarterly disclosure reports for every calendar quarter during which they retain their status as a *lobbying firm* or *organization lobbyist*.
- (b) *Expenditure lobbyists* shall file quarterly disclosure reports for every calendar quarter in which they qualify as *expenditure lobbyists*. An entity has no filing obligations as an *expenditure lobbyist* for any calendar quarter in which it does not meet the definition of an *expenditure lobbyist*.
- (c) Each *lobbying entity* shall file its quarterly disclosure report with the *City Clerk*, using forms provided by the *City Clerk*.

§27.4016 Filing Deadline for Quarterly Disclosure Report

Lobbying entities shall file quarterly disclosure reports no later than the last day of the months of April, July, October, and January. *Lobbying entities* shall disclose the information required by section 27.4017 for the calendar quarter immediately prior to the month in which the report is required to be filed.

§27.4017 Contents of Quarterly Disclosure Report

(a) Each *lobbying firm's* quarterly disclosure report shall contain the following information:

(1) the *lobbying firm's* name, address, and telephone number.

does not
require
identification
of "coalition"
clients

(2) the name, business or mailing address, and telephone number of each *client* represented by the *lobbying firm* during the reporting period (except that if the *client* is a coalition or membership organization, such identifying information need not be disclosed for any of its members who also qualify as *clients* under section 27.4002), along with the following information for that *client*:

(A) the specific *municipal decision(s)* for which the *lobbying firm* represented the *client* during the reporting period, and the outcome(s) sought by the *client*;

(B) the name and department of each *City Official* who was subject to *lobbying* by the *lobbying firm* with regard to that specific *municipal decision*;

(C) the name of each *lobbyist* employed by the *lobbying firm* who engaged in *lobbying activities* with regard to that specific *municipal decision*; and,

clarifies scope
of reportable
compensation

(D) the total *compensation* that the *lobbying firm* became entitled to receive for engaging in *lobbying activities* during the reporting period on behalf of that *client*. Such *compensation* shall be disclosed to the nearest thousand dollars.

(3) an itemization of *activity expenses* that includes the following:

\$50 aggregate
threshold
removed
because of
new gift limits

(A) the date, amount, and description of any *activity expense* that exceeds \$10 on any single occasion made by the *lobbying firm* or any of its *lobbyists* during the reporting period for the benefit of a single *City Official* or any member of a *City Official's immediate family*;

(B) the name, title, and department of the *City Official* who benefited, or whose *immediate family* benefited, from the itemized *activity expense*;

(C) the name of each *lobbyist* who participated in making the *activity expense*;

(D) the name and address of the payee of each itemized *activity expense*; and,

(E) the name of the *client*, if any, on whose behalf each itemized *activity expense* was made.

(4) an itemization of any campaign contributions of \$100 or more made by owners, officers, or *lobbyists* of the *lobbying firm* to a *candidate* or a *candidate-controlled* committee during the reporting period, including the date and amount of the contribution and the name of the *candidate* supported.

(5) an itemization of any campaign contributions of \$100 or more made by the *lobbying firm* or any of its owners, officers, or *lobbyists* during the reporting period to a *candidate-controlled* committee that is organized to support or oppose a ballot measure, including the name of the *candidate*, the date and amount of the contribution, and the name of the ballot measure committee.

(6) for each instance of *fundraising activity* by an owner, officer, or *lobbyist* of the *lobbying firm* during the reporting period:

(A) the name of the owner, officer, or *lobbyist* who engaged in the *fundraising activity*;

(B) the name of the elected *City Official* or *candidate* benefiting from the *fundraising activity*;

(C) a description of the ballot measure, if any;

(D) the date(s) of the *fundraising activity*;

(E) a brief description of the *fundraising activity*; and

reworded to mirror definition of 'fundraising activity'

(F) the approximate amount of (i) all contributions personally delivered by the owner, officer, or *lobbyist* to a *candidate* or a *candidate's* controlled committee; and (ii) all contributions for which the owner, officer, or *lobbyist* has identified himself or herself to a *candidate* or a *candidate's* controlled committee as having some degree of responsibility for raising.

(7) for each owner, officer, and *lobbyist* of the *lobbying firm* who personally provided compensated campaign-related services to a *candidate* or a *candidate-controlled* committee during the reporting period:

adds disclosure requirement for paid campaign services

(A) the name of the owner, officer, or *lobbyist* who provided the services;

(B) the *candidate's* name, and the office sought by that *candidate*;

(C) the name of the *candidate-controlled* ballot measure committee and a description of the ballot measure, if applicable;

(D) the approximate amount of *compensation* earned during the reporting period for the services provided to the *candidate* or *candidate-controlled* committee; and,

(E) a description of the services provided.

- (8) for each owner, officer, and *lobbyist* of the *lobbying firm* who personally provided compensated services under a contract with the *City* during the reporting period:

adds
disclosure
requirement
for City
contract
services

- (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the name of the department, agency, or *board* for which the services were provided;
 - (C) the approximate amount of *compensation* earned during the reporting period for the services provided under the contract; and,
 - (D) a description of the services provided.
- (9) a statement by a duly authorized owner or officer of the *lobbying firm* that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statement required by subsection (a)(9).
- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.
- (b) Each *organization lobbyist's* quarterly disclosure report shall contain the following information:
- (1) the *organization lobbyist's* full name, address, and telephone number.
 - (2) for each *municipal decision(s)* for which the *organization lobbyist* engaged in *lobbying activities* during the reporting period:
 - (A) a description of the specific *municipal decision*, and the outcome sought by the *organization lobbyist*;
 - (B) the name and department of each *City Official* who was subject to *lobbying* by the *organization lobbyist* during the reporting period with regard to that specific *municipal decision*; and,
 - (C) the name of each owner, officer, or employee of the *organization lobbyist* who engaged in *lobbying activities* during the reporting period with regard to that specific *municipal decision*.
 - (D) the total number of *lobbying contacts* with *City Officials* made on behalf of the *organization lobbyist* by the *organization lobbyist's* owners,

officers, or employees with regard to that specific *municipal decision* during the reporting period.

- (3) an itemization of *activity expenses* that includes the following:
 - (A) the date, amount, and description of any *activity expense* that exceeds \$10 on any single occasion made by the *organization lobbyist* or any of its *lobbyists* during the reporting period for the benefit of a single *City Official* or any member of a *City Official's immediate family*;
 - (B) the name, title, and department of the *City Official* who benefited, or whose *immediate family* benefited, from the itemized *activity expense*;
 - (C) the name of each *lobbyist* who participated in making the *activity expense*; and,
 - (D) the name and address of the payee of each itemized *activity expense*.
- (4) an itemization of any campaign contributions of \$100 or more made by owners, compensated officers, or *lobbyists* of the *organization lobbyist* to a *candidate* or a *candidate-controlled* committee during the reporting period, including the date and amount of the contribution and the name of the *candidate* supported.
- (5) an itemization of any campaign contributions of \$100 or more made by the *organization lobbyist* or any of its owners, compensated officers, or *lobbyists* during the reporting period to a *candidate-controlled* committee that is organized to support or oppose a ballot measure, including the date and amount of the contribution and the name of the ballot measure committee.
- (6) for each instance of *fundraising activity* by an owner, compensated officer, or *lobbyist* of the *organization lobbyist* during the reporting period:
 - (A) the name of the owner, officer, or *lobbyist* who engaged in the *fundraising activity*;
 - (B) the name of the elected *City Official* or *candidate* benefiting from the *fundraising activity*;
 - (C) a description of the ballot measure, if any;
 - (D) the date(s) of the *fundraising activity*;
 - (E) a brief description of the *fundraising activity*; and
 - (F) the approximate amount of (i) all contributions personally delivered by the owner, officer, or *lobbyist* to a *candidate* or a *candidate's* controlled committee; and (ii) all contributions for which the owner, officer, or *lobbyist* has identified himself or herself to a *candidate* or a *candidate's* controlled committee as having some degree of responsibility for raising.

reworded to
mirror
definition of
'fundraising
activity'

adds
disclosure
requirement
for paid
campaign
services

- (7) for each owner, compensated officer, and *lobbyist* of the *organization lobbyist* who personally provided compensated campaign-related services to a *candidate* or a *candidate*-controlled committee during the reporting period:
- (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the *candidate's* name, and the office sought by that *candidate*;
 - (C) the name of the *candidate*-controlled ballot measure committee and a description of the ballot measure, if applicable;
 - (D) the approximate amount of *compensation* earned during the reporting period for the services provided to the *candidate* or *candidate*-controlled committee; and,
 - (E) a description of the services provided.

adds
disclosure
requirement
for City
contract
services

- (8) for each owner, compensated officer, and *lobbyist* of the *organization lobbyist* who personally provided compensated services under a contract with the *City* during the reporting period:
- (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the name of the department, agency, or *board* for which the services were provided;
 - (C) the approximate amount of *compensation* earned during the reporting period for the services provided under the contract; and,
 - (D) a description of the services provided.
- (9) a statement by a duly authorized owner or officer of the *organization lobbyist* that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statement required by subsection (b)(9).
- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.

(c) An *expenditure lobbyist's* quarterly disclosure report shall contain the following information:

- (1) The name, address, and telephone number of the *expenditure lobbyist*.
- (2) The name, title, address, and telephone number of the individual responsible for preparing the report.

- (3) A description of each *municipal decision* that the *expenditure lobbyist* attempted to influence during the reporting period, and for each such *municipal decision*:

reworded to
clarify when
expenditure is
made

- (A) The total expenditures the *expenditure lobbyist* made during the reporting period for the purpose of attempting to influence that *municipal decision*. An expenditure is made on the date a *payment* is made or on the date consideration, if any, is received by the *expenditure lobbyist*, whichever is earlier. An *expenditure lobbyist* need not disclose expenditures for *lobbying activities* reported by a *lobbying firm* or *organization lobbyist* on a quarterly disclosure report.
- (B) The name, address, telephone number, and amount of *payment* for each *person* who made a *payment*, or the promise of a *payment*, of \$100 or more to the *expenditure lobbyist* for the express purpose of funding any expenditure identified in subsection (c)(3)(A).
- (C) The outcome sought by the *expenditure lobbyist*.
- (4) a statement by a duly authorized owner or officer of the *expenditure lobbyist* that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (5) the printed name, title, and original signature of the individual making the statement required by subsection (c)(4).
- (6) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.

§27.4018 Amendments to Quarterly Disclosure Reports

Any *lobbying entity* that discovers incomplete or inaccurate information in a quarterly disclosure report that it filed with the *City Clerk* shall, within ten calendar days of the discovery, file an amended quarterly disclosure report with the *City Clerk* disclosing all information necessary to make the report complete and accurate.

§27.4019 Retention of Records

In addition to any other requirement of this division, every *lobbying entity* shall retain for a period of five years all books, papers, and documents necessary to substantiate the quarterly disclosure reports required to be made under this division.

§27.4022 Termination of Status as Lobbying Firm or Organization Lobbyist

A *lobbying firm* or *organization lobbyist* that ceases being a *lobbying entity* shall notify the *City Clerk* of this status upon the quarterly disclosure report form provided by the *City Clerk*. Upon terminating, the *lobbying firm* or *organization lobbyist* shall report any information required by section 27.4017 that has not been reported since its last quarterly disclosure report.

§27.4023 Obligations of Individual Lobbyists

Every *lobbyist* shall:

- (a) disclose his or her status as a *lobbyist* to a *City Official* before making any *activity expense* to, or for the benefit of, that *City Official* or that *City Official's immediate family*;
- (b) abstain from doing any act with the purpose or intent of placing a *City Official* under personal obligation to the *lobbyist*, or to the *lobbyist's employer or client*;
- (c) correct, in writing, any misinformation given to a *City Official*, specifying the nature of the misinformation;
- (d) not deceive or attempt to deceive a *City Official* as to any material fact pertinent to any pending or proposed *municipal decision*;
- (e) not cause any communication to be sent to a *City Official* in the name of any fictitious *person*, or in the name of any real *person* without the consent of such real *person*; and,
- (f) not attempt to evade the obligations in this section through indirect efforts or through the use of *agents*, associates, or employees.

§27.4024 Employment of City Official or Employees by Lobbying Entity

If any *lobbying entity* employs or retains a current *City Official* or *City* employee, or any member of that official's or employee's *immediate family*, that *lobbying entity* shall file a written statement with the *City Clerk* within ten calendar days after such employment commences. This statement shall set forth the name of the individual employed, the date the individual was first employed by the *lobbying entity*, and the individual's position, title, and department in the *City*.

§27.4030 Gifts from Lobbying Entities and Lobbyists

- (a) It is unlawful for a *lobbying firm* or any of its *lobbyists* to make a *gift*, act as an *agent* or intermediary in the making of a *gift*, or arrange for the making of a *gift* if:
 - (1) the *gift* is given to a *City Official*, and
 - (2) the aggregate value of all *gifts* from the *lobbying firm* and its *lobbyists* to that *City Official* exceeds \$10 within a calendar month.
- (b) It is unlawful for a *organization lobbyist* or any of its *lobbyists* to make a *gift*, act as an *agent* or intermediary in the making of a *gift*, or arrange for the making of a *gift* if:
 - (1) the *gift* is given to a *City Official*, and
 - (2) the aggregate value of all *gifts* from the *organization lobbyist* and its *lobbyists* to that *City Official* exceeds \$10 within a calendar month.

- (c) For purposes of this section, an entity or individual “arranges for the making of a *gift*” if the entity or individual, either directly or through an *agent*, does any of the following:
 - (1) delivers a *gift* to the recipient;
 - (2) acts as the representative of the donor, if the donor is not present at the occasion of a *gift*, except when accompanying the recipient to an event where the donor will be present;
 - (3) invites or sends an invitation to an intended recipient regarding the occasion of a *gift*;
 - (4) solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a *gift*;
 - (5) is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a *gift*; or,
 - (6) acts as an intermediary in connection with the reimbursement of a recipient's expenses.

§27.4040

Powers and Duties of the City Clerk

- (a) Upon receipt of a written request, the *City Clerk* may issue a notice of filing obligations to any *person* whom a *City Official* or any other *person* has reason to believe should file a registration form or quarterly disclosure report under this division. Before sending the notice, the Clerk:
 - (1) shall require the *City Official* or *person* making the request to provide a written statement of the factual basis for the belief; and,
 - (2) shall determine whether sufficient facts exist to warrant sending the notice.
- (b) Any *person* who in good faith and on reasonable grounds believes that he, she, or it is not required to comply with the provisions of sections 27.4007 or 27.4015 by reason of being exempt under any provision of this division shall not be deemed to have violated the provisions of these sections if, within ten calendar days after the *City Clerk* has sent specific written notice, the *person* either complies with the requirements of this division, or furnishes satisfactory evidence to the Clerk that he, she, or it is exempt from filing obligations.
- (c) As soon as practicable after the close of each quarter, the *City Clerk* shall complete a summary of the information contained in registration forms and quarterly disclosure reports required to be filed under the provisions of this division. This summary shall be forwarded to the Mayor, City Council, and the *Enforcement Authority*.
- (d) The *City Clerk* shall preserve all registration forms and quarterly disclosure reports required to be filed under this division for a period of five years from the date of filing. These registration forms and quarterly disclosure reports shall constitute part

of the public records of the Clerk's office, and shall be open to public inspection. Copies shall be made available by the Clerk upon request and payment of any lawful copy charges.

- (e) The *City Clerk* shall report apparent violations of this division to the *Enforcement Authority*.
- (f) The *City Clerk* shall have the power to adopt all reasonable and necessary procedures to implement this division.

§27.4041 Inspection of Forms and Reports

- (a) The *City Clerk* shall inspect, or cause to be inspected, each registration form and quarterly disclosure report filed under this division within thirty calendar days after the filing deadline. The Clerk shall notify an entity to file a registration form or quarterly disclosure report under this division if it appears that the entity has failed to file as required by law or that the registration form or quarterly disclosure report filed by the entity does not conform to law.
- (b) Any entity notified to file an original or amended registration form or quarterly disclosure report shall file the form or report by the deadline imposed in the notification from the Clerk.

§27.4045 Online Disclosure of Forms and Reports

- (a) It is the intent of the *City* to implement an electronic filing system that facilitates the disclosure of *lobbying activities* engaged in by *lobbying entities*. When a practical and financially feasible electronic filing system has been implemented by the *City Clerk*, the provisions of this section shall be in effect.
- (b) Every *lobbying entity* required to file a registration form or quarterly disclosure report pursuant to this division shall use the *City Clerk's* electronic filing system to file online such forms or reports.
- (c) Every *lobbying entity* shall continue to file a paper copy of each form or report with the *City Clerk*. The paper copy shall continue to be the original form or report for audit and other legal purposes.
- (d) The information contained on a form or report filed online shall be the same as that contained on the paper copy of the same form or report that is filed with the *City Clerk*.

§27.4050 Enforcement Authority: Duties, Complaints, Legal Action, Investigatory Powers

- (a) Any *person* who believes that violation of any portion of this division has occurred may file a complaint with the *Enforcement Authority*.
- (b) The *Enforcement Authority* shall have such investigative powers as are necessary for the performance of the duties prescribed in this division. The *Enforcement Authority* may demand and shall be furnished any records that may prove or disprove the accuracy of information contained in a registration form or quarterly disclosure report. In the event that there is a claim that any such records are entitled

language added
to address claim
of attorney-client
privilege

to protection from disclosure under the attorney-client privilege, the *Enforcement Authority* shall be provided with sufficient documentation to verify the information to which the *City* is entitled under California Business and Professions Code section 6009.

- (c) The *Enforcement Authority* shall determine whether forms and reports have been filed as required and, if so, whether they conform to the requirements of this division.
- (d) The *Enforcement Authority* may elect to enforce the provision of this division administratively pursuant to Chapter 2, Article 6, Division 4, or may otherwise recommend or refer enforcement actions to the City Attorney or other law enforcement agency with jurisdiction.

§27.4055

Violations, Penalties and Defenses

- (a) Violations of this division may be prosecuted as misdemeanors subject to the fines and custody provided in San Diego Municipal Code section 12.0201. The *City* may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202. In addition, if the matter is pursued by the *Enforcement Authority* as an administrative matter, any *person* found in violation is subject to the administrative penalties provided for in Chapter 2, Article 6, Division 4.
- (b) In addition to any other penalty or remedy available, if any lobbying entity fails to file any registration form or quarterly disclosure report required by this division after any deadline imposed by this division, that lobbying entity shall be liable to the *City* of San Diego in the amount of \$10 per calendar day after the deadline until the report is filed, up to a maximum amount of \$100.
- (c) Provisions of this division need not be enforced by the *City* Clerk if it is determined that the late filing was not willful and that enforcement of the penalty would not further the purposes of this division.
- (d) Provisions of this division shall not be waived if a registration form or quarterly disclosure report, or an amendment to correct any deficiency in a registration form or quarterly disclosure report, is not filed by the deadline imposed in the notification from the *City* Clerk of the filing requirement.
- (e) Any limitation of time prescribed by law within which prosecution for a violation of any part of this division must be commenced shall not begin to run until the *City's* discovery of the violation.



Strikeout Version

Revision date:
February 15, 2007

LOBBYING ORDINANCE REVIEW

– DRAFT REVISIONS –

(Proposed Effective Date: January 1, 2008)

Article 7: Elections, Campaign Finance and Lobbying

Division 40: Municipal Lobbying

§27.4001 Purpose and Intent

The purpose of this division is to provide registration and disclosure requirements whereby individuals acting as *Municipal Lobbyists* are required to register with the City. The purpose of registration is to require *Lobbyists* to provide sufficient information so that complete disclosure of principals and *Clients* they represent may become public information for the benefit of the City Council and the general public. This division is not intended to discourage or prohibit the exercise of constitutional rights.

It is the purpose and intent of the City Council of the City of San Diego in enacting this division to: ensure that the citizens of the City of San Diego have access to information about persons who attempt to influence decisions of City government through the use of paid lobbyists; establish clear and unambiguous registration and disclosure requirements for lobbyists in order to provide the public with relevant information regarding the financing of lobbyists and the full range of lobbying activities; prohibit registered lobbyists from exerting improper influence over City Officials or from placing City Officials under personal obligation to lobbyists or their clients; promote transparency concerning attempts to influence municipal decisions; avoid corruption and the appearance of corruption in the City's decision-making processes; regulate lobbying activities in a manner that does not discourage or prohibit the exercise of constitutional rights; reinforce public trust in the integrity of local government; and ensure that this division is vigorously enforced.

§27.4002 Definitions

All defined terms in this ~~Division~~ division appear in italics. ~~The first letter of each term defined in this Division is capitalized.~~ Unless the context otherwise indicates, the defined terms have the meanings set forth below.

~~“Activity Expense”~~ Activity Expense means any ~~Payment~~ payment made to, or benefiting or on behalf of, any *City Official* or ~~any member of a City Official's immediate family,~~ made by a *Lobbyist* ~~lobbyist, lobbying firm, or organization lobbyist.~~ An Activity Expense benefits a City Official if it is made to, or on behalf of, the City Official. An Activity Expense includes gifts provided to the City Official's spouse or dependent child if the City Official receives benefits from the gift or exercises control or discretion over the use or disposal of the gift. ~~“Activity Expenses”~~ Activity expenses include *gifts, meals, honoraria, consulting fees, salaries, and any*

other form of ~~Compensation~~ compensation to a City Official or a City Official's immediate family, but do not include campaign contributions.

~~"Agent"~~ Agent means a ~~Person~~ person who acts on behalf of any other ~~Person~~ person.

~~"Agent"~~ Agent includes a ~~Person~~ person who acts on behalf of a ~~Lobbyist~~ lobbyist.

Candidate means any individual who is holding, or seeking to hold, elective City office.

~~"City"~~ City means the City of San Diego or any of its organizational ~~subdivision, office, or board~~ subdivisions, agencies, offices, or boards of the City.

~~"City Board"~~ City Board includes the boards of directors of all City agencies, and any board, commission, committee, or task force of the City established by action of the City Council under authority of the City Charter, Municipal Code, or Council resolution, whose members are required to file a statement of economic interests pursuant to the California Political Reform Act of 1974, as amended.

~~"City Official"~~ includes:

- (a) any elected or appointed ~~City~~ officeholder, including any ~~City~~ officeholder elected but not yet sworn in, ~~City Board~~ member, or employee of the ~~City~~ or any ~~City~~ agency, who, as part of his or her official duties, participates in the consideration of any Municipal Decision other than in a purely clerical, secretarial or ministerial capacity;
- (b) ~~City Council~~ members acting in their capacity as Housing Authority and Redevelopment Agency officers; and
- (c) any consultants of this ~~City~~ who are required to file a statement of economic interest pursuant to any conflict of interest code adopted by the ~~City Council~~.

City Official means any of the following officers or employees of the City, which includes all City agencies: elected officeholder; Council staff member; Council Committee Consultant; Assistant City Attorney; Deputy City Attorney; General Counsel; Chief; Assistant Chief; Deputy Chief; Assistant Deputy Chief; City Manager; Assistant City Manager; Deputy City Manager; Treasurer; Auditor and Comptroller; Independent Budget Analyst; City Clerk; Labor Relations Manager; Retirement Administrator; Director; Assistant Director; Deputy Director; Assistant Deputy Director; Chief Executive Officer; Chief Operating Officer; Chief Financial Officer; President; and Vice-President. City Official also means any member of a City Board.

~~"Client"~~ Client means

- (a) a ~~person~~ who compensates a ~~lobbyist~~, including an In House Lobbyist, for the purpose of influencing a municipal decision; or
- (b) a ~~person~~ on whose behalf a ~~lobbyist~~ makes attempts at influencing a municipal decision.

any person who provides compensation to a lobbying firm for the purpose of influencing a municipal decision, and any person on whose behalf lobbying activities are performed by a lobbying firm.

- (a) Client includes any person that retains a *lobbying firm* to engage in *lobbying activities* pursuant to a contingency agreement.
- (b) If a coalition or membership organization is a *client*, a member of that coalition or organization is not also a *client* unless that member paid, or agreed to pay, at least \$1,000 to the *lobbying firm* for *lobbying activities* performed on behalf of the coalition or organization with regard to a specific *municipal decision*. For purposes of this subsection, if a member is an individual, payments by that individual's *immediate family* are attributable to that individual member.

~~"Committee"~~ has the same meaning as that set forth in California Government Code Section 82013.

~~"Compensated services"~~ means *lobbying activities* for which *compensation* was paid during a reporting period or for which the *lobbyist* became entitled to *compensation* during that period.

~~"Compensation"~~ Compensation means any economic consideration for services rendered or to be rendered. Compensation does not include , other than reimbursement for *travel expenses*.

Contact means the act of engaging in a *direct communication* with a *City Official* for the purpose of *influencing a municipal decision*. For purposes of this definition:

- (a) each discussion with a *City Official* regarding a different *municipal decision* is considered a separate *contact*;
- (b) each discussion regarding a *municipal decision* with a *City Official* and members of that official's immediate staff, or with multiple immediate staff members of the same *City Official*, is considered a separate *contact*;
- (c) each substantially similar communication, regardless of whether it is made by letter, e-mail, or facsimile, pertaining to one or more *municipal decisions* to one or more *City Officials* is considered a separate *contact* for each *municipal decision*.

~~Contract~~ includes but is not limited to written contracts, agreements, memoranda of understanding, and similar writings that set forth transactions involving personal property, real property, intellectual property, personal services, consultant services, public works, or insurance. For purposes of this division, ~~"contract"~~ and ~~"agreement"~~ are synonymous. The definition of ~~"contract"~~ is intended to be broadly construed.

~~Day~~ means calendar day unless otherwise specified.

~~"Direct Communication"~~ Direct communication means:

- (a) talking to (either by telephone or in person); or
- (b) corresponding with (either in writing or by electronic transmission or facsimile machine).

~~"Direct Communication"~~ does not include:

- (a) ~~solely responding to questions from any City Official; or~~
- (b) ~~appearing as a speaker at, or providing written statements which become part of the record of, a Public Hearing, so long as the Lobbyist identifies the Clients(s) represented; or~~
- (c) ~~a direct response to an enforcement proceeding with the City.~~

"Enforcement Authority" has the same meaning as that term is defined in Section 27.2903. Enforcement Authority means the City of San Diego Ethics Commission. Nothing in this article limits the authority of the City Attorney, any law enforcement agency, or any prosecuting attorney to enforce the provisions of this article under any circumstances where the City Attorney, law enforcement agency, or prosecuting attorney otherwise has lawful authority to do so.

Expenditure lobbyist means any person who makes expenditures for public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, studies, or similar activities designed to influence one or more municipal decisions, to the extent that such payments total \$5,000 or more within a calendar quarter. An expenditure is made on the date a payment is made or on the date consideration, if any, is received by the expenditure lobbyist, whichever is earlier. Expenditures for lobbying activities reported by a lobbying firm or organization lobbyist on a quarterly disclosure report shall not be considered for purposes of calculating the \$5,000 threshold.

Fundraising activity means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$1,000 or more in contributions to a candidate or to a candidate's controlled committee, or (b) identifying oneself to a candidate or a candidate's controlled committee as having any degree of responsibility for \$1,000 or more in contributions received as a result of that solicitation

"Gift" has the same meaning as that set forth in California Government Code section 82028. Gift means any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. Gifts are subject to the exceptions set forth in Municipal Code section 27.3525.

In-House Lobbyist" means an individual who engages in Lobbying solely on behalf of his or her business or employer. In-House Lobbyist includes, but is not limited to, owners, officers, and salaried employees of a business.

Immediate family means an individual's spouse or registered domestic partner, and any dependent children.

"Influencing a municipal decision" Influencing a municipal decision means affecting or attempting to affect any action by a City Official on one or more Municipal Decisions

municipal decisions by any method, including promoting, supporting, opposing, or seeking to modify or delay such action. ~~“Influencing a municipal decision”~~ Influencing a municipal decision also includes providing information, statistics, analysis, or studies to a City Official.

~~“Lobbying”~~ Lobbying means ~~Direct Communication~~ direct communication with a City Official for the purpose of ~~Influencing a Municipal Decision~~ influencing a municipal decision on behalf of any other person.

Lobbying activities means the following and similar activities that are related to an attempt to influence a municipal decision: (a) lobbying; (b) monitoring municipal decisions; (c) preparing testimony and presentations; (d) engaging in research, investigation, and fact-gathering; (e) attending hearings; (f) communicating with clients; and (g) waiting to meet with City Officials.

Lobbying entity means any lobbying firm, organization lobbyist, or expenditure lobbyist.

Lobbying firm means any entity that receives or becomes entitled to receive any amount of monetary or in-kind compensation to engage in lobbying activities on behalf of any other person, and that has at least one direct communication with a City Official for the purpose of influencing a municipal decision. A lobbying firm includes any entity that engages in lobbying activities on behalf of another person pursuant to a contingency fee agreement.

~~“Lobbyist”~~ means an individual who receives or becomes entitled to receive the threshold Compensation amount during any calendar quarter for Lobbying, and who has had at least one Direct Communication with a City Official in that calendar quarter. ~~Lobbyist~~ includes:

- (a) ~~In House Lobbyists~~ who engage in Lobbying;
- (b) ~~individuals under contract to engage in Lobbying~~; and
- (c) ~~individuals employed by a firm under contract to provide Lobbying services, whose pro-rated salary for Lobbying activities meets the threshold Compensation during any calendar quarter.~~

Lobbyist means any individual who engages in lobbying activities on behalf of a client or an organization lobbyist.

Ministerial action means any action that does not require a City Official to exercise discretion concerning any outcome or course of action. A ministerial action includes, but is not limited to, decisions on private land development made pursuant to Process 1 as described in Chapter 11 of the Municipal Code.

~~“Municipal Decision”~~ Municipal decision includes:

- (a) the drafting, introduction, consideration, reconsideration, adoption, defeat, or repeal of any ordinance or resolution; and
- (b) the amendment of any ordinance or resolution; and
- (c) a report by a City Official to the City Council or a City Council Committee; and

- (d) contracts; and
- (e) quasi-judicial decisions, including:
 - (1) any decision on a land development permit, map or other matter decided pursuant to Process 2 through 5 as described in Chapter 11 of this Municipal Code; and
 - (2) any grant of, denial of, modification to, or revocation of a permit or license under Chapter 1 through 10 of this Municipal Code; and
 - (3) any declaration of debarment as described in Chapter 2, Article 2, Division 8, of this Municipal Code; and
- (f) any other decision of the *City Council* or a *City Board*.

~~"Municipal Decision" does not include any of the following:~~

- ~~(a) any request for advice regarding, or for an interpretation of laws, regulations, City approvals or policies; or~~
- ~~(b) any communication among attorneys representing a party or potential party to pending or actual litigation brought by or against the City, or City agent, officer or employee; or~~
- ~~(c) any ministerial action such as decisions on private land development made pursuant to Process 1 as described in Chapter 11 of this Municipal Code; or~~
- ~~(d) any action relating to the establishment, amendment, administration, implementation or interpretation of a collective bargaining agreement or memorandum of understanding between the City and a recognized employee organization, or a proceeding before the Civil Service Commission; or~~
- ~~(e) any management decisions as to the working conditions of represented employees that clearly relate to the terms of collective bargaining agreements or memoranda of understanding pursuant to (d) above.~~

Organization lobbyist means any business or organization, including any non-profit entity, that provides compensation to one or more employees who have a total of 10 or more separate contacts with one or more City Officials within 60 consecutive calendar days for purposes of lobbying on behalf of the organization lobbyist. An employee of any parent or subsidiary of the business or organization is considered an employee of that entity. "Employees" of an organization lobbyist include the owners, officers, and employees of the business or organization.

"Payment" has the same meaning as that set forth in California Government Code section 82044. Payment means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services, or anything else of value, whether tangible or intangible.

~~"Person"~~ Person means any individual, business entity, trust, corporation, association, committee, or any other organization or group of *persons* acting in concert.

~~"Public Hearing"~~ Public hearing means any meeting as defined by the Ralph M. Brown Act where a public record is kept of who spoke and who was represented by a *lobbyist* testifying at that hearing.

~~"Public Official"~~ Public official means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies; the State of California; the *City*; any political subdivision of the State, including counties and districts; or any public corporation, agency, or commission.

~~"Travel Expenses"~~ Travel expenses means reasonable expenses for transportation plus a reasonable sum for food and lodging.

§27.4004 Exceptions

The following *persons* and activities are exempt from the requirements of this division:

- (a) a ~~Public Official~~ public official acting in his or her official capacity and any government employee acting within the scope of his or her employment;
- (b) any newspaper or other regularly published periodical, radio station, or television station (including any individual who owns, publishes, or is employed by any such newspaper, periodical, radio station, or television station) that in the ordinary course of business publishes news items, editorials, or other comments or paid advertisements ~~which that~~ directly or indirectly urge action on a ~~Municipal Decision~~ municipal decision, if such newspaper, periodical, radio station, or television station, or individual engages in no other activities to ~~Influence a Municipal Decision~~ influence a municipal decision; and
- (c) any ~~Person~~ person whose sole activity includes one or more of the following, unless the activity involves direct communication with a member of the City Council or a member of the City Council's immediate staff:
 - (1) to submit a bid on a competitively bid contract;
 - (2) to submit a written response to a request for proposals or qualifications;
 - (3) to participate in an oral interview for a request for proposals or qualifications; or,
 - (4) to negotiate the terms of a contract or agreement with the ~~City~~ *City*, once the ~~City~~ *City* has authorized either by action of the ~~City~~ *City* Council, ~~City~~ *City* Manager, or voters, entering an agreement with that ~~Person~~ person whether that ~~Person~~ person has been selected pursuant to a bid, request for proposals or qualifications, or by other means of selection recognized by law.
 - (5) to communicate in connection with the administration of an existing contract between the person and the City.

- (d) any request for advice regarding, or for an interpretation of, laws, regulations, City approvals, or policies;
- (e) any communication by an attorney with regard to his or her representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the City, or City agent, officer, or employee;
- (f) any communication concerning a ministerial action;
- (g) any communication concerning the establishment, amendment, administration, implementation, or interpretation of a collective bargaining agreement or memorandum of understanding between the City and a recognized employee organization, or concerning a proceeding before the Civil Service Commission;
- (h) any communication concerning management decisions regarding the working conditions of represented employees that clearly relate to the terms of collective bargaining agreements or memoranda of understanding pursuant to (g) above;
- (i) solely responding to questions from any City Official, or providing oral or written information in response to a subpoena or as otherwise compelled by law;
- (i) solely appearing as a speaker at, or providing written statements that become part of the record of, a public hearing;
- (k) any direct response to an enforcement proceeding with the City.
- (l) the provision of purely technical data or analysis to a City Official by an expert, so long as the expert does not otherwise engage in direct communication for the purpose of influencing a municipal decision. This subsection is intended to be interpreted in a manner consistent with title 2, section 18239(d)(3)(A) of the California Code of Regulations.
- (m) the publishing of any information on an Internet website that is accessible to the general public.

§27.4005

Threshold Determination

- (a) ~~For the purpose of determining whether a Lobbyist has met the threshold for Compensation registration required by Section 27.4007, time spent on the following activities shall be included:~~
 - (1) ~~monitoring a Municipal Decision the Lobbyist is seeking to influence;~~
 - (2) ~~preparing testimony and presentations;~~
 - (3) ~~attending hearings on a Municipal Decision the Lobbyist is seeking to influence;~~
 - (4) ~~communicating with the Lobbyist's Client or the Lobbyist's employer on a Municipal Decision the Lobbyist is seeking to influence; and~~

- (5) ~~waiting to meet with City Officials. These and similar activities are an integral part of Influencing a Municipal Decision.~~
- (b) ~~The threshold Compensation shall be calculated as follows:~~
 - (1) ~~In 1999 it is \$2,000.~~
 - (2) ~~It will be adjusted each year thereafter, based on the San Diego Consumer Price Index percentage change.~~
- (c) ~~The City Clerk shall publish the threshold Compensation amount on or before January 10 of each year.~~

§27.4006 Activity Expense on Behalf of Client

An ~~Activity Expense~~ activity expense shall be considered to be made on behalf of a ~~Client~~ client if the ~~Client~~ client requires requests, authorizes, or reimburses the expense.

§27.4007 Registration Required

- (a) ~~A Lobbyist Every lobbying firm and organization lobbyist~~ is required to register with the City Clerk no later than ten ~~(10) calendar Days~~ days after qualifying as a ~~Lobbyist~~ lobbying firm or organization lobbyist.
- (b) ~~Within ten (10) Days after qualifying as a Lobbyist, a Lobbyist shall report the information required by Section 27.4017 for any Compensated Services the Lobbyist provided in the three (3) months prior to the date of qualification as a Lobbyist.~~
- (c) ~~Lobbyists shall file with the City Clerk the registration form with the Lobbyists' original signature. Lobbying firms and organization lobbyists shall file their registration forms with the City Clerk, using forms provided by the City Clerk.~~
- (d)(c) ~~Nothing in this division precludes an individual entity from registering as a lobbyist lobbying firm or organization lobbyist prior to qualifying as such.~~
- (d) An entity that registers as a lobbying firm or organization lobbyist retains that status through January 5 of the following calendar year unless and until it terminates that status in accordance with section 27.4022. An entity that continues to qualify as a lobbying firm or organization lobbyist on January 5 shall renew that registration on or before January 15 of each year.

§27.4009 Contents of Lobbyist's Registration Form

~~Lobbyists shall file with the City Clerk the registration form which contains the following:~~

- (a) ~~the Lobbyist's full name, business address, and business telephone number;~~
- (b) ~~the name, business address, and business telephone number of the Lobbyist's employer, if any;~~

- (c) a specific description of the *Lobbyist's* employer, if any, in sufficient detail to inform the reader of the nature and purpose of the employer's business;
- (d) ~~for each *Client* for which the *Lobbyist* provides *Lobbying Activities*:~~
 - (1) ~~the *Client's* name, business or mailing address, and business or message telephone number;~~
 - (2) ~~a specific description of each *Client* in sufficient detail to inform the reader of the nature and purpose of the *Client's* business;~~
 - (3) ~~the specific *Municipal Decision(s)* for which the *Lobbyist* was retained to represent the *Client*, or a description of the type(s) of *Municipal Decision(s)* for which the *Lobbyist* was retained to represent the *Client*;~~
- (e) a statement that the *Lobbyist* has reviewed and understands the requirements of Division 40 governing municipal lobbying; and
- (f) any other information required by the City Clerk consistent with the purposes and provisions of ~~this division.~~
- (a) Every lobbying firm shall file with the City Clerk a registration form that contains the following information:
 - (1) the lobbying firm's name, address, and telephone number.
 - (2) the name of each individual employed by the lobbying firm:
 - (A) who has engaged in lobbying the City within the previous 30 calendar days, or
 - (B) who the lobbying firm reasonably anticipates will engage in lobbying the City in the future.
 - (3) a listing of all owners, officers, and lobbyists of the lobbying firm who engaged in fundraising activities for a current elected City Official during the two year period preceding the filing date, along with the name of each applicable City Official. Notwithstanding the requirements of this subsection, lobbying firms have no obligation to report fundraising activities that took place prior to January 1, 2007.
 - (4) a listing of all owners, officers, and lobbyists of the lobbying firm who personally provided compensated campaign-related services to a current elected City Official during the two year period preceding the filing date, along with the name of each applicable City Official. Notwithstanding the requirements of this subsection, lobbying firms have no obligation to report campaign-related services that were rendered prior to January 1, 2007.
 - (5) a listing of all owners, officers, and lobbyists of the lobbying firm who personally provided compensated services under a contract with the City during the two year period preceding the filing date, along with the name of the City department, agency, or board for which the services were provided. Notwithstanding the

requirements of this subsection, *lobbying firms* have no obligation to report compensated services provided prior to January 1, 2007.

- (6) for each *client* for whom the *lobbying firm* engages in *lobbying activities*:
 - (A) the *client's* name, business or mailing address, and telephone number; in addition, if the *client* is a coalition or membership organization, include the name, business or mailing address, and telephone number of each member who also qualifies as a *client* under section 27.4002.
 - (B) a specific description of each *client* in sufficient detail to inform the public of the nature and purpose of the *client's* business; and,
 - (C) the specific *municipal decision(s)* for which the *lobbying firm* was retained to represent the *client*, or a description of the type(s) of *municipal decision(s)* for which the *lobbying firm* was retained to represent the *client*, and the outcome(s) sought by the *client*;
- (7) statements by a duly authorized owner or officer of the *lobbying firm* that he or she:
 - (A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,
 - (B) reviewed the contents of the registration form and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (8) the printed name, title, and original signature of the individual making the statements required by subsection (a)(7).
- (9) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.
- (b) Every *organization lobbyist* shall file with the *City Clerk* a registration form that contains the following information:
 - (1) the *organization lobbyist's* name, address, and telephone number.
 - (2) a specific description of the *organization lobbyist* in sufficient detail to inform the public of the nature and purpose of its business.
 - (3) the name of each owner, officer, and employee of the *organization lobbyist* who is authorized to *lobby City Officials* on behalf of the *organization lobbyist*.
 - (4) the total number of *lobbying contacts* with *City Officials* made on behalf of the *organization lobbyist* by the *organization lobbyist's* owners, officers, or employees during the 60 calendar days preceding the filing date.

- (5) a description of each *municipal decision* the *organization lobbyist* has sought to influence during the 60 calendar days preceding the filing date; and the outcome sought by the *organization lobbyist*.
- (6) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who engaged in *fundraising activities* for a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report *fundraising activities* that took place prior to January 1, 2007.
- (7) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who personally provided compensated campaign-related services to a current elected *City Official* during the two year period preceding the filing date, along with the name of each applicable *City Official*. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report campaign-related services that were rendered prior to January 1, 2007.
- (8) a listing of all owners, compensated officers, and *lobbyists* of the *organization lobbyist* who personally provided compensated services under a contract with the *City* during the two year period preceding the filing date, along with the name of the *City* department, agency, or *board* for which the services were provided. Notwithstanding the requirements of this subsection, *organization lobbyists* have no obligation to report compensated services provided prior to January 1, 2007.
- (9) statements by a duly authorized owner or officer of the *organization lobbyist* that he or she:
 - (A) reviewed and understands the requirements of Division 40 governing municipal lobbying; and,
 - (B) reviewed the contents of the registration form and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statements required by subsection (b)(9).
- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.

§27.4010 ~~Lobbyist and Client~~ Registration Fees

- (a) ~~At the time the *Lobbyist* registers pursuant to Section 27.4007, the *Lobbyist* shall pay:~~
 - (1) ~~an annual *Lobbyist* registration fee of forty dollars (\$40); plus~~
 - (2) ~~an annual *Client* registration fee of fifteen dollars (\$15) for each *Client* identified on the registration form.~~

- (b) ~~A Lobbyist who initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to Section 27.4007 shall pay:~~
 - (1) ~~a prorated Lobbyist registration fee of twenty dollars (\$20); plus~~
 - (2) ~~a prorated Client registration fee of ten dollars (\$10) for each Client identified on the registration form.~~
- (c) ~~When a Client is acquired subsequent to the initial registration, the Lobbyist shall pay the Client registration fee when filing the information required by Section 27.4009.~~
- (d) ~~For the purpose of determining Client registration fees, a trade association or business organization qualified under Internal Revenue Code 501(c)(6) shall consider its members as one Client.~~
- (e) ~~For the purpose of determining Client registration fees, a single Client registration fee shall be paid for a Person, other than an individual, that employs more than one In-House Lobbyist.~~
- (f) ~~Fees may be paid or reimbursed by the Person, if any, who employs the Lobbyist.~~
- (a) At the time a lobbying firm registers pursuant to section 27.4007, the lobbying firm shall pay an annual registration fee based on the number of lobbyists identified on its registration form, plus an annual client registration fee for each client identified on the registration form.
 - (1) A lobbying firm that initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to section 27.4007 shall pay prorated registration fees.
 - (2) When a lobbying firm adds a lobbyist subsequent to the lobbying firm's initial registration, the lobbying firm shall pay an additional lobbyist registration fee when filing its amended registration form as required by section 27.4012.
 - (3) When a lobbying firm acquires a client subsequent to the lobbying firm's initial registration, the lobbying firm shall pay an additional client registration fee when filing its amended registration form as required by section 27.4012.
 - (4) For the purpose of determining client registration fees, a coalition or membership organization shall be considered a single client, even if one or more of its members also qualify as clients under section 27.4002.
 - (5) Registration fees may be paid or reimbursed by a client.
- (b) At the time an organization lobbyist registers pursuant to section 27.4007, the organization lobbyist shall pay an annual organization lobbyist registration fee.
 - (1) An organization lobbyist that initially qualifies to register during the last quarter of a calendar year (October through December) pursuant to section 27.4007 shall pay a prorated registration fee.

(2) An organization lobbyist shall pay a single registration fee regardless of the number of its owners, officers, and employees who engage in lobbying activities.

(c) All registration fees shall be set by the City Council based upon the recommendation of the City Clerk. The City Clerk shall from time to time recommend fee amounts to the City Council that reflect, but do not exceed, the City's costs of administering the filing requirements set forth in this division. A copy of the fee schedule shall be filed in the rate book of fees on file in the office of the City Clerk.

§27.4012 Amendments to Registration Form

~~Except as provided in Section 27.4015(b), Within ten calendar days of any change in the information required on their registration forms, Lobbyists lobbying firms and organization lobbyists shall file amendments to their registration form forms, with the next quarterly disclosure report, and shall disclose any disclosing the change in information required on the registration form as set forth in Section 27.4009.~~

§27.4013 ~~Duration of Status~~

~~An individual who registers as a Lobbyist retains that status through January 5 of the following calendar year unless and until he or she terminates that status in accordance with Section 27.4022. An individual who continues to qualify as a Lobbyist on January 5 shall renew that registration on or before January 15 of each year.~~

§27.4014 ~~Notification of Activity Expense Paid to or Benefiting a City Official~~

(a) ~~Any Lobbyist required to file a disclosure report under the provisions of this division shall provide the following information to each City Official who is the beneficiary of an Activity Expense from the Lobbyist.~~

- ~~(1) the date and amount of the Activity Expense;~~
- ~~(2) a description of the Activity Expense provided to the City Official; and~~
- ~~(3) the client, if any, on whose behalf the expenditure was made.~~

(b) ~~The information required to be disclosed pursuant to subdivision (a) shall be provided in writing to the City Official who is the beneficiary within twenty business days after the date of the expenditure.~~

§27.4015 Quarterly Disclosure Report Required

(a) Lobbyists Lobbying firms and organization lobbyists shall file quarterly disclosure reports for every calendar quarter during which they retain their status as a Lobbyist lobbying firm or organization lobbyist.

(b) In lieu of amending the registration form, a Lobbyist may use the quarterly report to disclose any change in information required on the registration form as set forth in Section 27.4009. Expenditure lobbyists shall file quarterly disclosure reports for every

calendar quarter in which they qualify as expenditure lobbyists. An entity has no filing obligations as an expenditure lobbyist for any calendar quarter in which it does not meet the definition of an expenditure lobbyist.

- (c) ~~The Lobbyist shall file with the City Clerk the report with an original signature. Each lobbying entity shall file its quarterly disclosure report with the City Clerk, using forms provided by the City Clerk.~~

§27.4016 Filing Deadline for Quarterly Disclosure Report

~~Lobbyists Lobbying entities shall file quarterly disclosure reports with the City Clerk, with the Lobbyist's original signature, no later than the last Day day of the months of April, July, October, and January. Lobbyists Lobbying entities shall disclose the information required by Section section 27.4017 for the calendar quarter immediately prior to the month in which the report is required to be filed.~~

§27.4017 Contents of Lobbyist's Quarterly Disclosure Report

~~A Lobbyist's quarterly disclosure report shall contain the following information:~~

- ~~(a) the Lobbyist's full name, business address, and business telephone number;~~
- ~~(b) the name, business address, and business telephone number of the Lobbyist's employer, if any;~~
- ~~(c) the name, business or mailing address, and business or message telephone number of each Client represented by the Lobbyist during the reporting period; and the specific Municipal Decision(s) for which the Lobbyist represented the Client during the reporting period;~~
- ~~(d) total Compensation received during the reporting period in connection with Lobbying, itemized by Client. For Lobbyists employed by an entity that provides Lobbying services by contract with Clients, the individual Lobbyist shall report his or her pro rata share of Compensation received by, or entitled to be received by, the entity for Lobbying services provided to those Clients. Such Compensation shall be disclosed using the following ranges: [] 0-5,000; [] \$5,000-\$25,000; [] \$25,000-\$50,000; and [] Over \$50,000;~~
- ~~(e) an itemization, which includes the date, amount and description of any Activity Expenses made by the Lobbyist during the reporting period of \$10 or more on any one occasion; or Activity Expenses made by the Lobbyist during the reporting period aggregating \$50 or more during the quarter, to benefit any single City Official on behalf of any one Client;~~
- ~~(f) the name and title of the City Official benefiting from each itemized Activity Expense;~~
- ~~(g) the name and address of the payee of each itemized Activity Expense;~~
- ~~(h) the name of the vendor if different from that of the payee of each itemized Activity Expense;~~
- ~~(i) the name of the Client, if any, on whose behalf each itemized Activity Expense was made;~~

- (j) the total amount of all *Activity Expenses*, whether itemized or not, made by the *Lobbyist* during the reporting period; and
- (k) any other information required by the *City Clerk* consistent with the purposes and provisions of this division.
- (a) Each *lobbying firm's* quarterly disclosure report shall contain the following information:
 - (1) the *lobbying firm's* name, address, and telephone number.
 - (2) the name, business or mailing address, and telephone number of each *client* represented by the *lobbying firm* during the reporting period (except that if the *client* is a coalition or membership organization, such identifying information need not be disclosed for any of its members who also qualify as *clients* under section 27.4002), along with the following information for that *client*:
 - (A) the specific *municipal decision(s)* for which the *lobbying firm* represented the *client* during the reporting period, and the outcome(s) sought by the *client*;
 - (B) the name and department of each *City Official* who was subject to *lobbying* by the *lobbying firm* with regard to that specific *municipal decision*;
 - (C) the name of each *lobbyist* employed by the *lobbying firm* who engaged in *lobbying activities* with regard to that specific *municipal decision*; and,
 - (D) the total *compensation* that the *lobbying firm* became entitled to receive for engaging in *lobbying activities* during the reporting period on behalf of that *client*. Such *compensation* shall be disclosed to the nearest thousand dollars.
 - (3) an itemization of *activity expenses* that includes the following:
 - (A) the date, amount, and description of any *activity expense* that exceeds \$10 on any single occasion made by the *lobbying firm* or any of its *lobbyists* during the reporting period for the benefit of a single *City Official* or any member of a *City Official's* immediate family;
 - (B) the name, title, and department of the *City Official* who benefited, or whose immediate family benefited, from the itemized *activity expense*;
 - (C) the name of each *lobbyist* who participated in making the *activity expense*;
 - (D) the name and address of the payee of each itemized *activity expense*; and,
 - (E) the name of the *client*, if any, on whose behalf each itemized *activity expense* was made.
 - (4) an itemization of any campaign contributions of \$100 or more made by owners, officers, or *lobbyists* of the *lobbying firm* to a candidate or a candidate-controlled

committee during the reporting period, including the date and amount of the contribution and the name of the *candidate* supported.

- (5) an itemization of any campaign contributions of \$100 or more made by the *lobbying firm* or any of its owners, officers, or *lobbyists* during the reporting period to a *candidate*-controlled committee that is organized to support or oppose a ballot measure, including the name of the *candidate*, the date and amount of the contribution, and the name of the ballot measure committee.
- (6) for each instance of *fundraising activity* by an owner, officer, or *lobbyist* of the *lobbying firm* during the reporting period:
 - (A) the name of the owner, officer, or *lobbyist* who engaged in the *fundraising activity*;
 - (B) the name of the elected *City Official* or *candidate* benefiting from the *fundraising activity*;
 - (C) a description of the ballot measure, if any;
 - (D) the date(s) of the *fundraising activity*;
 - (E) a brief description of the *fundraising activity*; and
 - (F) the approximate amount of (i) all contributions personally delivered by the owner, officer, or *lobbyist* to a *candidate* or a *candidate's* controlled committee; and (ii) all contributions for which the owner, officer, or *lobbyist* has identified himself or herself to a *candidate* or a *candidate's* controlled committee as having some degree of responsibility for raising.
- (7) for each owner, officer, and *lobbyist* of the *lobbying firm* who personally provided compensated campaign-related services to a *candidate* or a *candidate*-controlled committee during the reporting period:
 - (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the *candidate's* name, and the office sought by that *candidate*;
 - (C) the name of the *candidate*-controlled ballot measure committee and a description of the ballot measure, if applicable;
 - (D) the approximate amount of *compensation* earned during the reporting period for the services provided to the *candidate* or *candidate*-controlled committee; and,
 - (E) a description of the services provided.
- (8) for each owner, officer, and *lobbyist* of the *lobbying firm* who personally provided compensated services under a contract with the *City* during the reporting period:

- (A) the name of the owner, officer, or lobbyist who provided the services;
 - (B) the name of the department, agency, or board for which the services were provided;
 - (C) the approximate amount of compensation earned during the reporting period for the services provided under the contract; and,
 - (D) a description of the services provided.
- (9) a statement by a duly authorized owner or officer of the lobbying firm that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
 - (10) the printed name, title, and original signature of the individual making the statement required by subsection (a)(9).
 - (11) any other information required by the Enforcement Authority or the City Clerk consistent with the purposes and provisions of this division.
- (b) Each organization lobbyist's quarterly disclosure report shall contain the following information:
- (1) the organization lobbyist's full name, address, and telephone number.
 - (2) for each municipal decision(s) for which the organization lobbyist engaged in lobbying activities during the reporting period:
 - (A) a description of the specific municipal decision, and the outcome sought by the organization lobbyist;
 - (B) the name and department of each City Official who was subject to lobbying by the organization lobbyist during the reporting period with regard to that specific municipal decision; and,
 - (C) the name of each owner, officer, or employee of the organization lobbyist who engaged in lobbying activities during the reporting period with regard to that specific municipal decision.
 - (D) the total number of lobbying contacts with City Officials made on behalf of the organization lobbyist by the organization lobbyist's owners, officers, or employees with regard to that specific municipal decision during the reporting period.
 - (3) an itemization of activity expenses that includes the following:
 - (A) the date, amount, and description of any activity expense that exceeds \$10 on any single occasion made by the organization lobbyist or any of its lobbyists

during the reporting period for the benefit of a single *City Official* or any member of a *City Official's immediate family*;

- (B) the name, title, and department of the *City Official* who benefited, or whose *immediate family* benefited, from the itemized *activity expense*;
- (C) the name of each *lobbyist* who participated in making the *activity expense*; and,
- (D) the name and address of the payee of each itemized *activity expense*.
- (4) an itemization of any campaign contributions of \$100 or more made by owners, compensated officers, or *lobbyists* of the *organization lobbyist* to a *candidate* or a *candidate-controlled* committee during the reporting period, including the date and amount of the contribution and the name of the *candidate* supported.
- (5) an itemization of any campaign contributions of \$100 or more made by the *organization lobbyist* or any of its owners, compensated officers, or *lobbyists* during the reporting period to a *candidate-controlled* committee that is organized to support or oppose a ballot measure, including the date and amount of the contribution and the name of the ballot measure committee.
- (6) for each instance of *fundraising activity* by an owner, compensated officer, or *lobbyist* of the *organization lobbyist* during the reporting period:
 - (A) the name of the owner, officer, or *lobbyist* who engaged in the *fundraising activity*;
 - (B) the name of the elected *City Official* or *candidate* benefiting from the *fundraising activity*;
 - (C) a description of the ballot measure, if any;
 - (D) the date(s) of the *fundraising activity*;
 - (E) a brief description of the *fundraising activity*; and
 - (F) the approximate amount of (i) all contributions personally delivered by the owner, officer, or *lobbyist* to a *candidate* or a *candidate's* controlled committee; and (ii) all contributions for which the owner, officer, or *lobbyist* has identified himself or herself to a *candidate* or a *candidate's* controlled committee as having some degree of responsibility for raising.
- (7) for each owner, compensated officer, and *lobbyist* of the *organization lobbyist* who personally provided compensated campaign-related services to a *candidate* or a *candidate-controlled* committee during the reporting period:
 - (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the *candidate's* name, and the office sought by that *candidate*;

- (C) the name of the *candidate*-controlled ballot measure committee and a description of the ballot measure, if applicable;
 - (D) the approximate amount of *compensation* earned during the reporting period for the services provided to the *candidate* or *candidate*-controlled committee; and,
 - (E) a description of the services provided.
- (8) for each owner, compensated officer, and *lobbyist* of the *organization lobbyist* who personally provided compensated services under a contract with the *City* during the reporting period:
- (A) the name of the owner, officer, or *lobbyist* who provided the services;
 - (B) the name of the department, agency, or *board* for which the services were provided;
 - (C) the approximate amount of *compensation* earned during the reporting period for the services provided under the contract; and,
 - (D) a description of the services provided.
- (9) a statement by a duly authorized owner or officer of the *organization lobbyist* that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.
- (10) the printed name, title, and original signature of the individual making the statement required by subsection (b)(9).
- (11) any other information required by the *Enforcement Authority* or the *City Clerk* consistent with the purposes and provisions of this division.
- (c) An *expenditure lobbyist*'s quarterly disclosure report shall contain the following information:
- (1) The name, address, and telephone number of the *expenditure lobbyist*.
 - (2) The name, title, address, and telephone number of the individual responsible for preparing the report.
 - (3) A description of each *municipal decision* that the *expenditure lobbyist* attempted to influence during the reporting period, and for each such *municipal decision*:
 - (A) The total expenditures the *expenditure lobbyist* made during the reporting period for the purpose of attempting to influence that *municipal decision*. An expenditure is made on the date a *payment* is made or on the date consideration, if any, is received by the *expenditure lobbyist*, whichever is

earlier. An expenditure lobbyist need not disclose expenditures for lobbying activities reported by a lobbying firm or organization lobbyist on a quarterly disclosure report.

(B) The name, address, telephone number, and amount of payment for each person who made a payment, or the promise of a payment, of \$100 or more to the expenditure lobbyist for the express purpose of funding any expenditure identified in subsection (c)(3)(A).

(C) The outcome sought by the expenditure lobbyist.

(4) a statement by a duly authorized owner or officer of the expenditure lobbyist that he or she has reviewed the contents of the quarterly disclosure report and verified under penalty of perjury that based on personal knowledge or on information and belief, that he or she believes such contents to be true, correct, and complete.

(5) the printed name, title, and original signature of the individual making the statement required by subsection (c)(4).

(6) any other information required by the Enforcement Authority or the City Clerk consistent with the purposes and provisions of this division.

§27.4018 Amendments to Quarterly Disclosure Reports

Any lobbying entity that discovers incomplete or inaccurate information in a quarterly disclosure report that it filed with the City Clerk shall, within ten calendar days of the discovery, file an amended quarterly disclosure report with the City Clerk disclosing all information necessary to make the report complete and accurate.

§27.4018 27.4019 Accountability Retention of Records

In addition to any other requirement of this division, every *Lobbyist lobbying entity* shall retain for a period of five years all books, papers, and documents necessary to substantiate the quarterly disclosure reports required to be made under this division.

§27.4020 Forms to be Provided by the City Clerk

~~Lobbyists shall file registration forms and quarterly disclosure reports required by this division on forms provided by the City Clerk.~~

§27.4021 Verification of Registration Form and Quarterly Disclosure Report

~~Lobbyists shall sign and verify registration forms and quarterly disclosure reports required by this division under penalty of California perjury laws.~~

§27.4022 Termination of Lobbyist Status as Lobbying Firm or Organization Lobbyist

~~An individual who~~ A lobbying firm or organization lobbyist that ceases being a Lobbyist lobbying entity shall notify the City Clerk of this status upon the quarterly disclosure report form provided by the City Clerk. Upon terminating, the individual lobbying firm or

organization lobbyist shall report the any information required in ~~Section~~ by section 27.4017 that ~~remains unreported~~ has not been reported since the its last quarterly disclosure report.

§27.4023 ~~Other Obligations of a Lobbyist~~ Individual Lobbyists

~~Any individual who is required to register as a Lobbyist under the provisions of this division, shall:~~ Every lobbyist shall:

- (a) ~~disclose his or her status as a Lobbyist lobbyist to a City Official before providing anything of value to that individual which would require disclosure as an Activity Expense to the City Official pursuant to Section 27.4014; making any activity expense to, or for the benefit of, that City Official or that City Official's immediate family;~~
- (b) ~~abstain from doing any act with the purpose or intent of placing a City Official under personal obligation to the Lobbyist lobbyist, or to the Lobbyist's lobbyist's employer or Client client;~~
- (c) ~~correct, in writing, any misinformation given to a City Official, specifying the nature of the misinformation;~~
- (d) ~~not deceive or attempt to deceive a City Official as to any material fact pertinent to any pending or proposed Municipal Decision municipal decision;~~
- (e) ~~not cause any communication to be sent to a City Official in the name of any fictitious Person person, or in the name of any real Person person, except with without the consent of such real Person person; and~~
- (f) ~~not attempt to evade the obligations in this section through indirect efforts or through the use of Agents agents, associates, or employees.~~

§27.4024 Employment of City Official or Employees by Lobbyist-Lobbying Entity

~~If any Lobbyist registered or required to be registered under Section 27.4007:~~

- (a) ~~employs, in any capacity whatsoever, or~~
- (b) ~~requests, recommends employs, in any, or causes the Lobbyist's employer to employ any individual known to be a City Official, the Lobbyist shall file a written statement with the City Clerk within ten (10) Days after such employment. This statement shall set forth the name of the individual employed, the date first employed by the Lobbyist or the Lobbyist's employer, and that individual's position, title, and department in the City.~~

If any lobbying entity employs or retains a current City Official or City employee, or any member of that official's or employee's immediate family, that lobbying entity shall file a written statement with the City Clerk within ten calendar days after such employment commences. This statement shall set forth the name of the individual employed, the date the individual was first employed by the lobbying entity, and the individual's position, title, and department in the City.

§27.4030 Gifts from Lobbying Entities and Lobbyists

- (a) It is unlawful for a *lobbying firm* or any of its *lobbyists* to make a *gift*, act as an *agent* or intermediary in the making of a *gift*, or arrange for the making of a *gift* if:
 - (1) the *gift* is given to a *City Official*, and
 - (2) the aggregate value of all *gifts* from the *lobbying firm* and its *lobbyists* to that *City Official* exceeds \$10 within a calendar month.
- (b) It is unlawful for a *organization lobbyist* or any of its *lobbyists* to make a *gift*, act as an *agent* or intermediary in the making of a *gift*, or arrange for the making of a *gift* if:
 - (1) the *gift* is given to a *City Official*, and
 - (2) the aggregate value of all *gifts* from the *organization lobbyist* and its *lobbyists* to that *City Official* exceeds \$10 within a calendar month.
- (c) For purposes of this section, an entity or individual "arranges for the making of a *gift*" if the entity or individual, either directly or through an *agent*, does any of the following:
 - (1) delivers a *gift* to the recipient;
 - (2) acts as the representative of the donor, if the donor is not present at the occasion of a *gift*, except when accompanying the recipient to an event where the donor will be present;
 - (3) invites or sends an invitation to an intended recipient regarding the occasion of a *gift*;
 - (4) solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a *gift*;
 - (5) is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a *gift*;
or,
 - (6) acts as an intermediary in connection with the reimbursement of a recipient's expenses.

§27.4025 §27.4040 Powers and Duties of the City Clerk

- (a) Upon receipt of a written request, the *City Clerk* may issue a notice of registration ~~requirements~~ filing obligations to any ~~*Person*~~ *person* whom a *City Official* or any other ~~*Person*~~ *person* has reason to believe should ~~be registered~~ file a registration form or quarterly disclosure report under this division. Before sending the notice, the Clerk:
 - (1) shall require the *City Official* or ~~*Person*~~ *person* making the request to provide a written statement of the factual basis for the belief; and,
 - (2) shall determine whether sufficient facts exist to warrant sending the notice.

- (b) Any ~~individual~~ person who in good faith and on reasonable grounds believes that he, or she, or it is not required to comply with the provisions of ~~Section~~ sections 27.4007 or 27.4015 by reason of being exempt under any provision of this division shall not be deemed to have violated the provisions of ~~Section 27.4007~~ these sections if, within ten ~~(10) Days~~ calendar days after the City Clerk has sent specific written notice, the ~~individual~~ person either complies with the requirements of this division, or furnishes satisfactory evidence to the Clerk that he, or she, or it is exempt from ~~registration~~ filing obligations.
- (c) As soon as practicable after the close of each quarter, the City Clerk shall complete a summary of the information contained in registration forms and quarterly disclosure reports required to be filed under the provisions of this division. This summary shall be forwarded to the Mayor, and City Council, and the Enforcement Authority.
- (d) The City Clerk shall preserve all registration forms and quarterly disclosure reports required to be filed under this division for a period of five years from the date of filing. These registration forms and quarterly disclosure reports shall constitute part of the public records of the Clerk's office, and shall be open to public inspection. Copies shall be made available by the Clerk upon request and payment of any lawful copy charges.
- (e) The City Clerk shall report apparent violations of this division to the Enforcement Authority.
- (f) The City Clerk shall have the power to adopt all reasonable and necessary procedures to implement this division.

~~§27.4026~~ §27.4041 **Inspection of Forms and Reports**

- (a) The City Clerk shall inspect, or cause to be inspected, each registration form and quarterly disclosure report filed under this division within ~~twenty (20) working Days~~ thirty calendar days after the filing deadline. The Clerk shall notify an ~~individual~~ entity to file a registration form or quarterly disclosure report under this division if it appears that the ~~individual~~ entity has failed to file as required by law or that the registration form or quarterly disclosure report filed by the ~~individual~~ entity does not conform to law.
- (b) Any ~~individual~~ entity notified to file an original or amended registration form or quarterly disclosure report shall file the form or report by the deadline imposed in the notification from the Clerk.

§27.4045 **Online Disclosure of Forms and Reports**

- (a) It is the intent of the City to implement an electronic filing system that facilitates the disclosure of lobbying activities engaged in by lobbying entities. When a practical and financially feasible electronic filing system has been implemented by the City Clerk, the provisions of this section shall be in effect.
- (b) Every lobbying entity required to file a registration form or quarterly disclosure report pursuant to this division shall use the City Clerk's electronic filing system to file online such forms or reports.

- (c) Every *lobbying entity* shall continue to file a paper copy of each form or report with the City Clerk. The paper copy shall continue to be the original form or report for audit and other legal purposes.
- (d) The information contained on a form or report filed online shall be the same as that contained on the paper copy of the same form or report that is filed with the City Clerk.

§27.4027 §27.4050 Enforcement Authority: Duties, Complaints, Legal Action, Investigatory Powers

- (a) Any ~~Person~~ person who believes that violation of any portion of this ~~Division~~ division has occurred may file a complaint with the *Enforcement Authority*.
- (b) The *Enforcement Authority* shall have such investigative powers as are necessary for the performance of the duties prescribed in this ~~Division~~ division. The *Enforcement Authority* may demand and shall be furnished ~~records of Lobbying Activity Expenses activity expenses at any time.~~ any records that may prove or disprove the accuracy of information contained in a registration form or quarterly disclosure report. In the event that there is a claim that any such records are entitled to protection from disclosure under the attorney-client privilege, the *Enforcement Authority* shall be provided with sufficient documentation to verify the information to which the City is entitled under California Business and Professions Code section 6009.
- (c) The *Enforcement Authority* shall determine whether ~~required statements and declarations forms and reports have been filed as required and, if so, whether they conform with~~ to the requirements of this ~~Division~~ division.
- (d) The *Enforcement Authority* may elect to enforce the provision of this ~~Division~~ division administratively pursuant to Chapter 2, Article 6, Division 4, or may otherwise recommend or refer enforcement actions to the City Attorney or other law enforcement agency with jurisdiction.

§27.4028 §27.4055 Violations, Penalties and Defenses

- (a) Violations of this division may be prosecuted as misdemeanors subject to the fines and custody provided in San Diego Municipal Code section 12.0201. The City may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code section 12.0202, ~~or pursue any administrative remedy set forth in Chapter I of this Code.~~ In addition, if the matter is pursued by the *Enforcement Authority* as an administrative matter, any *person* found in violation is subject to the administrative penalties provided for in Chapter 2, Article 6, Division 4.
- (b) In addition to any other penalty or remedy available, if any individual *lobbying entity* fails to file any registration form or quarterly disclosure report required by this division after any deadline imposed by this division, that individual *lobbying entity* shall be liable to the City of San Diego in the amount of ~~ten dollars (\$10)~~ per *Day* calendar day after the deadline until the report is filed, up to a maximum amount of \$100.
- (c) Provisions of this division need not be enforced by the City Clerk if it is determined that the late filing was not willful and that enforcement of the penalty would not further the purposes of this division.

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- (d) Provisions of this division shall not be waived if a registration form or quarterly disclosure report, or an amendment to correct any deficiency in a registration form or quarterly disclosure report, is not filed by the deadline imposed in the notification from the *City* Clerk of the filing requirement.
- (e) Any limitation of time prescribed by law within which prosecution for a violation of any part of this division must be commenced shall not begin to run until the *City's* discovery of the violation.

**DRAFT****FACT SHEET: "AM I A LOBBYIST?"**

The City's Lobbying Ordinance imposes registration and reporting requirements on lobbying firms, organization lobbyists, and expenditure lobbyists. Lobbying firms and organization lobbyists are entities that employ at least one individual lobbyist. This fact sheet is designed to assist individuals with determining whether or not they are lobbyists, and accordingly, whether the firm, business, or organization they work for is required to register with the City Clerk and report lobbying activities. This fact sheet is designed to offer general guidance to prospective lobbyists, but should not be considered a substitute for the actual language contained in the Lobbying Ordinance.

GENERAL RULES

- ❖ A "lobbyist" is defined in the City's Lobbying Ordinance as any individual who engages in "lobbying activities" on behalf of a client or on behalf of an organization lobbyist.
- ❖ The most important part of "lobbying activities" is lobbying itself, which occurs when an individual has a direct communication (e.g., meeting, talking on the telephone, sending a letter or e-mail) with a City Official for the purpose of influencing a municipal decision.
- ❖ Other "lobbying activities" include monitoring municipal decisions, preparing testimony and presentations, engaging in research, performing investigations, gathering facts, attending hearings, communicating with clients, and waiting to meet with City Officials, to the extent that such activities are related to influencing a municipal decision.
- ❖ The term "City Official" does not include all City employees. The following positions are "City Officials" under the Lobbying Ordinance (keep in mind that the "City" includes the City's agencies, such as CCDC, SDDPC, etc.):

Elected officeholder	Council staff member	Council Committee Consultant
Assistant City Attorney	Deputy City Attorney	General Counsel
Chief	Assistant Chief	Deputy Chief
Assistant Deputy Chief	Treasurer	Auditor and Comptroller
Independent Budget Analyst	City Clerk	Labor Relations Manager
Retirement Administrator	Director	Assistant Director
Deputy Director	Assistant Deputy Director	Chief Executive Officer
Chief Operating Officer	Chief Financial Officer	President
Vice-President		

- ❖ City Officials also include the members of any City board, commission, or committee who are required to file Statements of Economic Interests.
- ❖ If you are a lobbyist, then the firm, business, organization that you own or work for may be required to register with the City Clerk. The type of registration depends on whether the lobbying is done on behalf of clients (register as a "lobbying firm") or on behalf of the entity you own or work for (register as an "organization lobbyist").

- ❖ There is a third type of lobbying entity – the expenditure lobbyist. These lobbyists do not register annually, but are still required to file Quarterly Disclosure Reports with the City Clerk when they make expenditures designed to indirectly influence municipal decisions through methods such as public relations, media relations, advertising, public outreach, research, investigation, reports, analyses, and studies (instead of having direct contacts with City Officials). Please see the Fact Sheet on Expenditure Lobbyists for additional information.
- ❖ There are a number of exceptions to the Lobbying Ordinance that may be applicable to a prospective lobbyist. For a complete list of all the exceptions, please refer to the Fact Sheet on Exceptions to the Lobbying Ordinance.

REGISTRATION – LOBBYING FIRMS

- ❖ If you work for a firm that has clients, and you attempt to influence a municipal decision on behalf of a client in exchange for compensation, then your firm must register with the City Clerk as a “lobbying firm” as soon as it has at least one instance of lobbying a City Official.
- ❖ For example, McGruder & Sons is a law firm that specializes in land use litigation. On one occasion, it contacts a City Official for the purpose of influencing an upcoming land use matter on behalf of one of its clients. Because McGruder & Sons is paid to influence municipal decisions on behalf of a client, it must register with the City Clerk as a “lobbying firm.”
- ❖ Note that in the above example registration would be required even if the client had not yet paid McGruder & Sons for the lobbying. If the firm is entitled to be paid for lobbying, including an entitlement that is contingent on a particular outcome, then that firm is a “lobbying firm.”
- ❖ As indicated by the above example, attorneys are not exempt from the City’s Lobbying Ordinance.
- ❖ Firms must register with the City Clerk within ten calendar days of qualifying as a “lobbying firm.”

REGISTRATION – ORGANIZATION LOBBYISTS

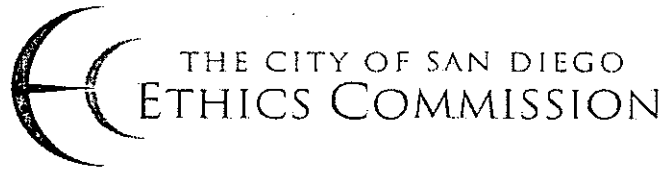
- ❖ If you own or work for a business or organization, including a non-profit or charitable organization, and your lobbying activities are performed on behalf of your business or employer (and not on behalf of outside clients), then that business or employer may be an “organization lobbyist.” It will qualify as an “organization lobbyist” if its compensated owners, officers, or employees have a total of 10 or more separate lobbying contacts with City Officials within any 60 consecutive calendar day period.
- ❖ For example, Quality Wireless is a business entity interested in providing cellular telephone service in the City of San Diego. Several of its employees are assigned the task of contacting City Officials to encourage them to support the placement of cellular towers on City property. These employees have three meetings with Council Chiefs of Staff, make six telephone calls to the Director of Real Estate Assets, and send an identical e-mail message to all of the members of the City Council. All this activity takes place over the course of several weeks. Because Quality Wireless had 10 lobbying contacts with City Officials within a 60 day period, it must register with the City Clerk as an “organization lobbyist.”
- ❖ Businesses and organizations must register with the City Clerk within ten calendar days of qualifying as an “organization lobbyist.”
- ❖ Under the Lobbying Ordinance’s “contacts” rules:
 - ✓ Each meeting with a City Official regarding a single municipal decision counts as 1 contact; a meeting regarding 2 municipal decisions counts as 2 contacts.

- ✓ A meeting with a City Official and a member of that official's immediate staff regarding a single municipal decision counts as 1 contact, even if the staff member is also a "City Official."
- ✓ A meeting with 2 City Officials regarding a single municipal decision counts as 2 contacts (unless one of the officials is the immediate staff member of the other official).
- ✓ Meeting multiple times in the same day, to discuss the same municipal decision discussed earlier in the day, counts as 1 contact.
- ✓ A meeting that starts one day and finishes the next day, pertaining to the same municipal decision, counts as 1 contact.
- ✓ A meeting does not have to take place in a City Official's office to count as a contact. A meeting includes any social or political occasion, such as a lunch engagement, cocktail party, reception, fundraiser, or similar event where an individual has direct communication with a City Official regarding a municipal decision. A meeting also includes a chance encounter on the street if it results in an attempt to influence a municipal decision.
- ✓ Meetings with, and letter, faxes, and e-mails to, a non-City Official (i.e., someone whose title is not mentioned in the above-referenced list) are not considered "contacts" for purposes of the Lobbying Ordinance.
- ✓ Substantially similar letters, faxes, and e-mails count as 1 contact for each municipal decision discussed, regardless of the number of City Officials to whom they are sent. For example, sending the same e-mail message to 8 Councilmembers, and using that e-mail message as the sole contents of a letter to 3 Department Directors would count as 1 contact. Note that using a different argument or making a different point would characterize a communication as being "substantially different."
- ✓ Substantially different letters, faxes, and e-mails that pertain to a single municipal decision count as 1 contact for each different letter, fax, or e-mail. For example, sending 1 letter to four Councilmembers that emphasizes financial concerns regarding a project, and sending 1 letter to three Councilmembers emphasizing that project's environmental issues, would count as 2 contacts (one contact for each different letter).

ADDITIONAL FILING INFORMATION

- ❖ In addition to filing a Registration Form, each lobbying firm and organization lobbyist must file a Quarterly Disclosure Report with the City Clerk to report their activities during the following calendar quarters: January through March; April through June; July through September; and October through December. Each report must be filed with the City Clerk no later than the last day of the month that follows the reporting period. Consult the instructions for these reports for more information.
- ❖ Lobbying firms and organization lobbyists generally retain their status until January 5 of the following year, and must renew their registration at that time (i.e., file a new Registration Form with the City Clerk) if they continue to qualify as a lobbying entity. If, however, a lobbying firm or organization lobbyist ceases to engage in lobbying activities in the midst of a calendar year, it may terminate its status as a lobbying entity by filing a Quarterly Disclosure Report with the City Clerk and reporting all of its activity to date.

If you have any questions concerning who is, and who is not, a "lobbyist" in the City of San Diego, please contact the Ethics Commission at (619) 533-3476.

**DRAFT**

FACT SHEET ON EXCEPTIONS TO THE LOBBYING ORDINANCE

The City's Lobbying Ordinance imposes registration and reporting requirements for lobbying activities. Some entities and activities, however, are exempt from these requirements. This fact sheet is designed to offer general guidance to prospective lobbyists with regard to factors that may exclude them or their activities from the scope of the Lobbying Ordinance, but should not be considered a substitute for the actual language contained in the ordinance.

- ❖ The Lobbying Ordinance does not apply to a public official acting in his or her official capacity, or to a government employee acting within the scope of his or her employment. Accordingly, a County employee does not become a "lobbyist" when he or she is seeking to influence a City decision.
- ❖ Communications pertaining to bidding on contracts through the City's competitive bid process do not generally fall within the scope of the Lobbying Ordinance. In other words, bids and responses to requests for proposals or qualifications are not lobbying contacts. Negotiating the terms of a duly authorized contract is also not a lobbying contact. Note, however, that this exception does not extend to communications with a member of the City Council or a member of the City Council's immediate staff.
- ❖ The act of requesting advice or an interpretation of a City law, regulation, or policy from a City Official does not constitute lobbying. For example, contacting the City Attorney's Office for an interpretation of a City law would fall outside the scope of the Lobbying Ordinance. On the other hand, providing the City Attorney's Office with reasons to change the language of an ordinance being submitted to the City Council would be considered lobbying.
- ❖ There is an attorney-litigation exception for communications involving pending or actual litigation or administrative enforcement actions. For example, an attorney who communicates with members of the Civil Service Commission regarding a pending civil service matter would not be engaging in "lobbying." Note that this exception is narrow and applies only to "pending or actual" litigation. It does not apply to other types of contentious matters, even if it is likely that the parties involved in a particular matter will eventually litigate their disputes. An attorney who seeks to influence a pending land use decision by contacting a City Official, for example, would be engaging in lobbying activities.
- ❖ Communications regarding purely ministerial actions (i.e., actions that do not require a City Official to exercise discretion concerning an outcome) are not considered lobbying activities. For example, making arrangements to meet with a City Official would be considered "ministerial" (although the meeting itself could involve "lobbying").
- ❖ Communications with City employees who are not "City Officials" are not considered lobbying contacts. See the Fact Sheet entitled "Am I a Lobbyist?" for a list of "City Official" positions. If your activities are limited to contacts with other types of City employees (e.g., plan checkers, engineers, program managers, etc.) then your activities are not regulated by the Lobbying Ordinance.
- ❖ Communications concerning collective bargaining agreements [CBA] and memorandums of understanding [MOU] between the City and a union are not considered lobbying activities. Note, however, that if a union representative seeks to influence a municipal decision not directly related to

the applicable CBA or MOU, then “lobbying” is taking place. For example, a union leader who meets with the Independent Budget Analyst to influence a decision involving outsourcing of City services is making a lobbying contact.

- ❖ A person who receives a subpoena or other legal request to provide information to the City is not lobbying the City when he or she provides information to the City in response to that request.
- ❖ A person’s direct response to an enforcement proceeding with the City does not constitute a lobbying contact. For example, if the City initiates a code enforcement action against a person for a noise violation, that person does not become a lobbyist by filing a response to a notice of violation. On the other hand, a lobbying contact would occur if that same person went outside the scope of the code enforcement process by meeting with a City Councilmember to try to convince the Councilmember to have the matter dismissed.
- ❖ A person whose contact with City Officials is limited to appearing as a speaker at public hearings is not a lobbyist. Public hearings include City Council meetings, Council committee meetings, City board and commission meetings, and any other meeting subject to the noticing requirements of the Ralph M. Brown Act. Note that this exemption is not available to individuals who also have lobbying contacts with City Officials. For example, speaking on behalf of an employer at a public meeting counts as a “contact” if one of the employer’s owners, compensated officers, or employees also has a private meeting with a City Official.
- ❖ Similarly, a person whose contact with City Officials is limited to submitting documents that become part of the record of a public hearing is not a lobbyist. Note that you do not obtain this exemption simply by sending a document to a Councilmember or the City Clerk. For City Council meetings, the exemption applies only to documents that the City Clerk receives and associates with an item on an upcoming docket.
- ❖ A person who provides purely technical data or analysis to a City Official does not become a lobbyist unless he or she engages in other actions to influence a municipal decision. For example, a soils engineer who prepares a report detailing an inspection of property that is the subject of a municipal decision would not be “lobbying” simply by providing that report to a City Official. That same person, however, would become a lobbyist if he or she communicated with the City Official beyond the technical scope of the document. If, for example, the soils engineer informs a City Official of community opposition to a project, he or she is “lobbying.”
- ❖ News items, editorials, and comments made in the ordinary course of business by a newspaper, magazine, radio station, or television station do not qualify as communications subject to the Lobbying Ordinance. Keep in mind, however, that this exception does not preclude the possibility that media outlets may still engage in “lobbying.” For example, if a member of a newspaper’s editorial board contacts City Officials on behalf of the newspaper in an attempt to influence an upcoming municipal decision, that newspaper could become an “organization lobbyist.”
- ❖ Communicating through an Internet website that is accessible to the general public is not considered lobbying. For example, the Voice of San Diego, an online-only publication, does not become a lobbyist when printing news stories or editorials that seek to influence the actions of City Officials. In addition, a person writing a blog (web log) encouraging particular action by City Officials is not lobbying so long as that blog is accessible to the general public.

If you have any questions concerning exemptions to the City of San Diego’s Lobbying Ordinance, please contact the Ethics Commission at (619) 533-3476.



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COMPARISON OF LOBBYING LAWS – REGISTRATION THRESHOLD

Type of Lobbyist	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Contract lobbyist	\$2,625 in a calendar quarter	\$1	\$1,000 within 3 consecutive months	\$3,200 in a calendar quarter or 25 contacts within 2 consecutive months	\$0 (Any attempt to influence a County decision by anyone who makes personal or telephone contact with County official)	\$2,000 in a calendar month or 1/3 of time in calendar month
Organization lobbyist	\$2,625 in a calendar quarter	10 contacts with City Officials within 60 calendar days	30 compensated hours within 3 consecutive months	25 contacts within 2 consecutive months	\$0 (Any attempt to influence a County decision by anyone who makes personal or telephone contact with County official)	1/3 of time in calendar month
Expenditure lobbyist	n/a	\$5,000 within 90 calendar days	\$5,000 in a calendar quarter	\$3,200 within 3 consecutive months	n/a	n/a

¹ Current San Diego Municipal Code §§ 27.4005

² Proposed San Diego Municipal Code § 27.4002

³ L.A. Municipal Lobbying Ordinance § 48.02

⁴ San Francisco Campaign and Government Conduct Code § 2.105

⁵ San Diego County Code of Regulatory Ordinances § 23.102

⁶ California Government Code §§ 18238.5, 18239, 18239.5

ATTACHMENT 4



000154

COMPARISON OF LOBBYING LAWS – INFORMATION ON REGISTRATION FORM

Category	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Firm or individual registers?	Individual	Firm and/or organization	Both	Either entity or individual	Either entity or individual	Firm and/or organization
Lobbyist information	Yes	Yes	Yes	Yes	Yes	Yes
Names of officers and/or employees	n/a	Yes	Yes	Yes	No	Yes
Names of Client/s	Yes	Yes	Yes	Yes	Yes	Yes
Nature/purpose of filer's or client's business	Yes	Yes	No	No	No	Yes
Client authorization	No	No	Yes	Yes	No	Yes
Decisions to be influenced	Yes	Yes	Yes	Yes	No	No
Outcome sought	No	Yes	No	Yes	No	No
Agency to be lobbied	No	No	Yes	No	Yes (departments and names of Supervisors)	Yes
Compensation received or promised	No	No	No	Yes (within past two months)	No	No
Previous contacts	No	Yes (for organization lobbyists)	No	Yes (within past two months)	No	No

Category	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Campaign contributions	No	No	No	Yes (within past two months; itemize \$100 or more)	No	No
Campaign fundraising	No	Yes; name of any current elected official for whom at least \$1,000 was raised within past 2 years	No	Yes (within past two months; itemize \$100 or more)	No	No
Compensated campaign services	No	Yes; for any current elected official within past 2 years	No	No	No	No
City contracts	No	Yes; any contract services provided within past 2 years	No	No	No	No
Amendments	Any change in information filed with next quarterly disclosure report	Filed within 10 calendar days of discovery	Filed within 10 calendar days of discovery	Required but no timeframe specified	Not addressed	Filed within 20 calendar days of discovery
Other Information	n/a	n/a	Training required every two years	(1) Must register before contacting city official; (2) Re-registration reports must include date of most recent training	n/a	Photograph of each lobbyist & training certification

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¹ Current San Diego Municipal Code §§ 27.4007, 27.4009, 27.4012

² Proposed San Diego Municipal Code §§ 27.4007, 27.4009, 27.4012

³ L.A. Municipal Lobbying Ordinance § 48.07(D),(E),(G),(I)

⁴ San Francisco Campaign and Government Conduct Code §2.110

⁵ San Diego County Code of Regulatory Ordinances §23.104

⁶ California Government Code §§ 86100, 86103, 86104, 86105, 86107



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COMPARISON OF LOBBYING LAWS – CONTENTS OF QUARTERLY DISCLOSURE REPORTS

Category	San Diego (current)	San Diego (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Firm or individual files?	Individual	Firm or organization	Both	Either entity or individual	Either entity or individual	Both
Lobbyist information	Yes	Yes	Yes	Yes	Yes	Yes
Names of officers and/or employees	n/a	Yes	Yes	Yes	No	Yes
Names of Client/s	Yes	Yes	Yes	Yes	No	Yes
Compensation Received	Yes, in following ranges: (\$0-\$5,000; \$5,000–25,000; \$25,000–50,000; Over \$50,000)	Yes, to nearest \$1,000 (for lobbying firms)	Yes (total payments received)	Yes (total payments promised and total payments received)	No	Yes (total payments received)
Number of contacts	No	Yes (for organization lobbyists)	No (but organization lobbyists required to disclose compensation paid to employees)	No (but organization lobbyists required to disclose compensation paid to employees)	No	No (but lobbyist employers must disclose payments to employees who spend 10% of time in one month on lobbying)
Decisions influenced	Yes	Yes	Yes	Yes	No	Yes

Category	San Diego ² (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Outcome sought	No	Yes	No	Yes	No	No
Identity of City Official lobbied	No	Yes (name and department)	Yes (department or agency; not name of individual)	Yes (name, title, and department)	No	Yes (agency or department name must be identified for administrative actions)
Activity expenses (includes consulting fees, salaries, & other forms of compensation)	Yes if \$10 or more on one occasion or \$50 or more aggregate during reporting period	Yes if \$10 or more on one occasion during reporting period	Yes, if \$25 or more	Yes (all expenses regardless of amount)	Yes if \$25 or more on one occasion or \$100 or more aggregate during reporting period (gifts from lobbyist to elected officials and candidates are prohibited)	Yes (all expenses regardless of amount)
Campaign contributions	No	Yes (itemize \$100 or more)	Yes (itemize \$100 or more)	Yes (itemize \$100 or more)	Yes (itemize \$100 or more; note that contributions are prohibited if official is identified on lobbyist registration as someone the lobbyist will attempt to influence)	Yes (itemize \$100 or more)
Campaign fundraising	No	Yes if \$1,000 or more raised; include name of candidate, date & description of activity, and approximate amount raised	Yes; include name of candidate, date of activity, and amount raised	Yes; itemize \$100 or more; include name of candidate and indicate whether the filer delivered or arranged the contribution or whether a client made the contribution at the lobbyist's behest	No	No

000157100

Category	San Diego ¹ (current)	San Diego ² (proposed)	Los Angeles ³	San Francisco ⁴	County of San Diego ⁵	State of CA ⁶
Compensated campaign services	No	Yes	Yes	Yes	No	No
City contracts	No	Yes	Yes	Yes	No	No
Amendments	Not addressed	Filed within 10 calendar days of discovery	Not addressed	Not addressed	Not addressed	Not addressed
Miscellaneous	n/a	n/a	Must disclose contributions of \$1,000 or more made at behest of city officials to other candidates and/or to charitable or nonprofit organizations	Must separately disclose gift tickets and admissions to political and charitable fundraisers	n/a	Invitations from lobbyists must include a disclosure indicating that attendance at the event constitutes acceptance of a reportable gift. (§86112.3)

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¹ Current San Diego Municipal Code §§ 27.4017

² Proposed San Diego Municipal Code §§ 27.4015, 27.4017, 27.4018

³ L.A. Municipal Lobbying Ordinance § 48.08, 48.08.5

⁴ San Francisco Campaign and Government Conduct Code §2.110(d)

⁵ San Diego County Code of Regulatory Ordinances §23.106

⁶ California Government Code §§ 86112 – 86116; FPPC Regs. 18613, 18616



000159

COMPARISON OF LOBBYING LAWS – MISCELLANEOUS ISSUES

Issue	San Diego (current)	San Diego (proposed)	Los Angeles	San Francisco	County of San Diego	State of California
City Official defined	Elected officeholders, City board members, or City employees (other than purely clerical) (\$27.4002)	List of 29 positions identified in ordinance (\$27.4002)	Elected or appointed officers, members, employees, or consultants who qualify as public officials pursuant to state law (those who file SEIs) (\$48.02)	Any officer of the City and County of San Francisco (\$2.105)	List of 21 positions included in ordinance (\$23.102)	Any employee (other than purely clerical) (\$82004, 82038)
Fees	\$40 registration \$15 per client (\$27.4010)	Fees to be set by Council and filed in Clerk's Rate Book of Fees; fees must be based on administration costs (\$27.4010)	\$450 registration \$75 per client (\$48.07)	\$500 registration \$75 per client (\$2.110(e))	None	\$25 (\$86102)
On-line filing	No provision	Required when system is implemented (\$27.4010)	Required (\$48.06.1)	Required when system is implemented (\$2.160)	No provision	Required if \$5000 or more in activity in quarter (84605(d))

Issue	San Diego (current)	San Diego (proposed)	Los Angeles	San Francisco	County of San Diego	State of California
Campaign contributions by lobbyist banned?	No	No	Yes (Charter § 470(c)(11))	No	Yes, for offices the lobbyist has indicated on registration that he or she will attempt to influence. (§23.109)	Yes, if the lobbyist is registered to lobby the governmental agency of the candidate or officer. (§85702)
Campaign consultants banned from lobbying?	No	No	No	Yes (§2.117)	No	No
Gift limits?	No (other than \$360 limit set forth in state and local ethics laws)	Yes (\$10 in a calendar month) (§27.4030)	Yes (Officials may not accept any gifts from lobbyists) (§49.5.10(A)(4))	Yes (\$50 within 3 months of contacting an official) (§2.115)	Yes. (Elected officials and candidates may not accept any gifts from registered lobbyists) (§23.109.5)	Yes (\$10 in a calendar month) (§86203)
Acting as intermediary for gifts prohibited?	No	Yes (if more than \$10 in a calendar month) (§27.4030)	Yes (§ 49.5.10(A)(5))	Yes (within 3 months of contacting an official) (§ 2.115)	No	Yes (§86203)
Contingent fees prohibited	No	No	No	No	No	Yes (for administrative & legislative actions, but not contracts) (§86205(f))

000160

Issue	San Diego (current)	San Diego (proposed)	Los Angeles	San Francisco	County of San Diego	State of California
Notification to Beneficiary of Activity Expense	Yes, within 20 business days (§27.4014)	Unnecessary if gifts over \$10 are prohibited	No	Yes, within 30 days after the end of a calendar quarter (note that gifts over \$50 are prohibited within 3 months of contacting an official) (§2.125)	No	Yes, within 30 days after the end of a calendar quarter (note that gifts over \$10 are prohibited) (§86112.5)

Rev. 2/15/07

**CITY OF SAN DIEGO
ETHICS COMMISSION**

M E M O R A N D U M

DATE: June 8, 2006

TO: Chair and Members of the San Diego Ethics Commission

FROM: General Counsel Cristie C. McGuire

SUBJECT: Constitutional Principles Involved in Developing Lobbying Regulations

At the May 11, 2006, meeting of the San Diego Ethics Commission, the Commission asked its General Counsel to prepare a brief report on constitutional law principles to keep in mind as it develops proposals for changes to San Diego's lobbying laws (San Diego Municipal Code §§ 27.4001–27.4008). This report is in response to that request.

I. First Amendment Issues

Lobbying laws and regulations touch on several First Amendment rights, in particular the rights of freedom of speech and association and the right to petition one's government. Lobbying laws also touch on constitutional principles of equal protection. The First Amendment issues are raised most frequently in challenges to the validity of lobbying laws and regulations. Therefore, these issues are treated first in this report.

A. Standard of Review for Lobbying Laws - Disclosure

As with other kinds of laws that touch on First Amendment rights, the courts have drawn a distinction between lobbying laws that substantially burden a First Amendment right and laws that merely incidentally burden those rights. Courts generally examine carefully how much a particular law or regulation burdens a lobbyist's constitutional rights.

If a court finds that a lobbying law merely incidentally burdens a fundamental right, the law will not become subject to strict scrutiny. "[R]egistration, reporting, and gift provisions are not direct limitations on the right to petition for redress of grievances. Application of the burdens of registration and disclosure of receipts and expenditures to lobbyists does not substantially interfere with the ability of the lobbyist to raise his voice." *Fair Political Practices Commission [FPPC] v. Institute of Governmental Advocates*, 25 Cal. 3d 33, 47 (1979). Accordingly, the issues that pertain solely to the disclosure of lobbying activities, such as whether to require lobbyists to report activity expenses, compensation received, decisions being influenced, fundraising, officials

contacted, and items of a similar nature, are subject to a relatively low constitutional standard.

Rather than being subject to “strict scrutiny,” the courts apply a “reasonableness” standard or the “rational basis test” to determine whether or not a lobbying disclosure law is valid. *FPPC*, 25 Cal 3d at 47. The rational basis test is met when the governmental action at issue is rationally a means to an end. *Warden v. State Bar*, 21 Cal.4th 628, 663 (1999). In other words, a disclosure law will meet constitutional muster so long as it is reasonably calculated to achieve its goal. In this context, the courts defer greatly to a governmental entity’s legislative judgment.

This is not to say that all disclosure laws are necessarily subject to a low level of scrutiny. As set forth in the *FPPC* case, when a lobbying disclosure law seeks information not truly related to lobbying, that law may significantly interfere with the fundamental right to petition, and accordingly may be subject to a higher level of scrutiny. In the *FPPC* case, the court subjected to strict scrutiny a law that would require a lobbyist to disclose all financial transactions with a bank if a person on the bank’s board of directors also served as a public official, even if those financial transactions had nothing to do with lobbying activities. Under that law, a lobbyist could not seek to influence governmental decisions unless he or she was willing to disclose unrelated private financial information, a requirement that imposed a significant impairment of First Amendment rights. “We are satisfied that the right to petition for redress of grievances . . . may not be conditioned upon disclosure of irrelevant private financial matters unrelated to the petition activity.” *FPPC*, 25 Cal 3d at 49. As applied to the City’s lobbying disclosure laws, therefore, such laws will not be subject to strict scrutiny so long as they remain limited to requiring disclosure only of information truly related to lobbying activities.

B. Standard of Review for Lobbying Laws – Prohibitions & Restrictions

Unlike laws that are purely related to lobbyist registration requirements and the disclosure of lobbying activities, a lobbying law that significantly infringes on protected First Amendment activities must meet a higher standard than the rational basis test. If a court finds that a lobbying law significantly abridges a fundamental right, such as the right of speech, association, or petition, that law will become subject to the court’s closest scrutiny, also known as “strict scrutiny.” *FPPC*, 25 Cal. 3d at 48. Such laws would include any that prohibit a lobbyist from making a contribution or engaging in fundraising activities. These kinds of activities directly limit a lobbyist’s speech and associational rights.

Even though a lobbying law may impair protected First Amendment rights, those rights are not absolute and the government may justify regulation of lobbying activity by showing it has a “compelling interest” in so doing. *FPPC*, 25 Cal 3d at 44-45. See also *State of Alaska v. Alaska Civil Liberties Union*, 978 P.2d 597, 619 (Alaska, 1999); *Minnesota State Ethical Practices Board v. National Rifle Association of America*, 761 F. 2d 509, 511 (8th Cir. 1985). These holdings stem from the landmark case of *Buckley v. Valeo*, 424 U.S. 1 (1976), which held that “[e]ven a significant interference with

protected rights of political association may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25.

Although not an exhaustive list, the compelling interests recognized by the courts as potentially justifying significant interference with First Amendment rights include: (1) ridding the political system of actual corruption or the appearance of corruption (*FPPC*, 25 Cal. 3d at 45; *Alaska*, 978 P. 2d at 618); (2) ridding the political system of improper influence (*FPPC*, 25 Cal. 3d at 45); and (3) ensuring that "the voice of the people" is "not too easily drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal" (*Minnesota State Ethical Practices Board*, 761 F.2d at 512, citing *U.S. v Harriss*, 347 U.S. 612, 625 (1954)).

In the *FPPC* case, the California Supreme Court found that a lobbying law that banned all contributions by any lobbyist demanded strict scrutiny because it substantially interfered with a lobbyist's freedom of association. *FPPC*, 25 Cal 3d at 44-45. The claimed government interest was to "rid the political system of both apparent and actual corruption and improper influence." *Id.* at 45. Even though eliminating corruption and improper influence are compelling governmental interests, a strict scrutiny analysis also requires that any law imposed to serve these interests be "closely drawn." *Id.* In evaluating the contribution ban, the Court found that the law was unconstitutional because it was not "narrowly directed to the aspects of the political association where potential corruption might be identified." *Id.* In particular, the prohibition applied to all candidates, even those whom the lobbyist would never have any reason to lobby. *Id.* The Court also questioned whether the law was serving its anti-corruption interest by prohibiting all contributions, even those that were relatively small. *Id.*

Based on the reasoning in the *FPPC* case, the Ethics Commission should tread cautiously when considering bans on lobbyist fundraising activities and contributions from lobbyists. If the Commission proposes, and the City Council adopts, a lobbying law that significantly affects First Amendment rights, the City will have to demonstrate that there are one or more compelling governmental interests in that law, and that the law is narrowly or closely drawn to serve those compelling interests and to avoid unnecessary abridgment of those rights. If the Commission wishes to pursue contribution and fundraising bans on the basis of corruption or undue influence, it must ensure that any prohibitions are carefully crafted to focus only on the narrow aspect of activities where actual and potential corruption have been identified. *FPPC*, 25 Cal 3d at 44.

With regard to limiting gifts from lobbyists to public officials, the California Supreme Court, in deciding the *FPPC* case, found that a law that prohibited lobbyists from making gifts of more than \$10 to a state candidate, state elected officer, or state agency official, was not subject to strict scrutiny, because the Court found that the restrictions on gift-giving were not direct limitations on the right to petition for redress of grievances. *FPPC*, 25 Cal 3d at 47.

II. Equal Protection Issue

Equal protection arguments often arise when a regulating body draws distinctions between individuals or groups of people, and chooses to regulate one group differently from another. If the validity of a lobbying regulation were challenged because it allegedly violated the constitutional right of equal protection under the laws, courts would likely apply the rational basis test discussed above. Under this test, legislative classifications are presumed to be valid. *Minnesota State Ethical Practices Board*, 761 F.2d at 513. To overcome this presumption, the challenger would have to show that "the facts on which the legislature may have relied in shaping the classification could not reasonably be conceived to be true by the governmental decisionmaker." *Id.*, citing *Brandwein v. California Board of Osteopathic Examiners*, 708 F.2d 1466, 1470 (9th Cir. 1983) (citations omitted).

III. Conclusion

If a lobbying law is found to burden a First Amendment right significantly, it will be subject to strict scrutiny. On the other hand, if it merely incidentally burdens a First Amendment right, it will be subject to a lesser standard, variously described as the "reasonableness standard" or the "rational basis test." Most of the subjects considered by the Ethics Commission thus far in its review of the City's Lobbying Ordinance pertain to the disclosure of activities that are purely related to lobbying, and are therefore subject only to the rational basis test. On the other hand, there have been some suggestions that the Commission consider imposing prohibitions on certain activities, including lobbyists making contributions or engaging in fundraising activities. Because such prohibitions significantly interfere with First Amendment rights of speech and association, they will likely be found unconstitutional unless they are closely drawn to serve a compelling governmental interest.

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ATTACHMENT 6

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San Diego's Pension Crisis

A matter of influence

San Diego City Hall is thick with lobbyists, but many sidestep the law. Lobbying rules remain loose, even as councilmen are convicted of extortion and conflicts of interest are charged in the city's fiscal scandal.

By Kelly Thornton
UNION-TRIBUNE STAFF WRITER

October 16, 2005

On the day the living-wage ordinance was up for a suspenseful vote, 600 people jammed the San Diego City Council meeting, hoping to cap two years of passionate campaigning with a victory. Donald Cohen was one of them. Eugene "Mitch" Mitchell was another.

Cohen and his organization, the Center on Policy Initiatives, had made the proposal to increase wages and benefits for employees of city contractors. Mitchell, vice president of public policy for the San Diego Regional Chamber of Commerce, marshaled efforts to defeat it.

Both men have cozy relationships at City Hall. Cohen lunches often with city officials. Mitchell is so comfortable in the council chambers that he uses the private door reserved for elected officials and their staff. The two have lobbied on a number of issues, including the wage law, which ultimately passed with a 5-4 vote in April.

But their names don't appear on the city's roster of registered lobbyists. Nor do many others who have tried to influence public officials on everything from ballparks to the budget crisis.

The city has a lobbying law, but those familiar with it say there are plenty of ways around its requirements, specifically the provision that people who lobby politicians and their staffs must register.

The bottom line: City Hall is being heavily pressured by people who don't publicly disclose whom they're representing, what decisions they're trying to influence, or what gifts they might have given to elected officials or staffers.



HOWARD LIPIN / Union-Tribune
Eugene "Mitch" Mitchell had the most frequent access to public officials over the past two years, while working for the San Diego Regional Chamber of Commerce.

Lobbying is a sensitive subject in a city where two councilmen were convicted of extortion and authorities are investigating whether conflicts of interest contributed to starving the pension fund while bloating retirement benefits. The one-two punch has crippled city services.

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"Powerful, well-connected people are flying under the radar," said registered lobbyist Jeff Marston, a former state assemblyman. "Labor, environmental, business interests. Why do they get a pass and all those 'slimy' lobbyists like me don't? Let's let folks know all the folks that are lobbying City Hall."

The most egregious offender was Lance Malone. The Las Vegas resident was convicted in July along with Ralph Inzunza and Michael Zucchet, who were then councilmen, of multiple counts of extortion, wire-fraud conspiracy and wire fraud. Councilman Charles Lewis, also indicted, died before the trial.

Malone, who never registered as a lobbyist, had unprecedented access to those councilmen and funneled thousands of dollars of illegal campaign contributions to them in exchange for efforts to repeal the law banning touching between patrons and dancers at strip clubs. He and the councilmen dined together and exchanged 330 phone calls over two years that were surreptitiously recorded by the FBI.

Inzunza and Zucchet have protested their convictions, saying they were unfairly prosecuted as a result of lobbying practices that are commonplace at City Hall.

Who is a lobbyist?

In a review of the appointment calendars of City Council members and their chiefs of staff over the past two years, The San Diego Union-Tribune found that fewer than half of the 25 people whose names appear most frequently – besides city employees – are registered lobbyists.

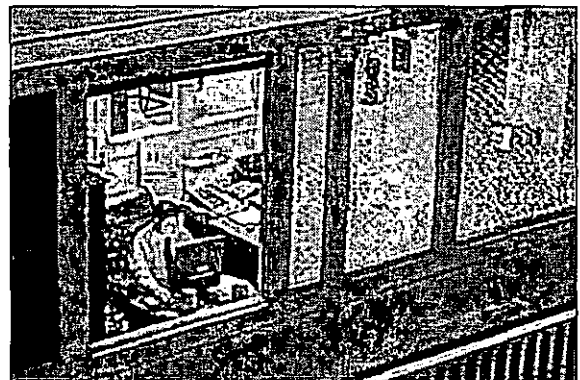
Most of the others who met with public officials are labor and business leaders. They include Jerry Butkiewicz, secretary-treasurer of the San Diego-Imperial Counties Labor Council; Johnnie Perkins, director of governmental affairs for the firefighters union; Ron Saathoff, president of the firefighters union; and Judie Italiano, head of the Municipal Employees Association, as well as San Diego Regional Economic Development Corp. Vice President Erik Bruvold. Some of them argue that they don't fall into the classic category of lobbyist.

Cohen and Butkiewicz draw a distinction between traditional lobbyists – who they say mostly represent developers – and groups that try to shape public policy and represent those without a voice, such as low-wage workers.

"It's different for advocacy groups like us, the chamber, the (American) Lung Association, the Environmental Defense Fund," Cohen said. "The activity may be the same, but it's a different story line."

Most lobbying laws don't adequately define the term "lobbyist," which defeats the purpose of transparency, said Michael McCarthy, a philosophy professor at Vassar College in Poughkeepsie, N.Y., who has co-written a book on the ethics of lobbying.

"I think the present rules both at the national level and at the local level have much too narrow a conception of what a lobbyist is," McCarthy said. "People are generally listed when they practice lobbying as a profession, and that lets people like business leaders and union leaders off the hook."



HOWARD LIPIN / Union-Tribune
John Dadian, a registered lobbyist, starts his day e-mailing East Coast clients about 5 a.m. He says San Diego's lobbying law is unevenly enforced.

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San Diego's lobbying ordinance requires anyone who has direct communication with a city official for the purpose of influencing a municipal decision, and who is paid more than \$2,542 per quarter, to register with the City Clerk's Office. The law provides an exception for any person whose "sole activity" is to negotiate terms of a contract with the city. Violations can result in fines or misdemeanor prosecution.

The number of lobbyists registered in San Diego has declined to 83 this year from 103 in 2001.

The 25 names that appear most often on the calendars are collectively listed 458 times from 2003 to 2005. Among the names, Cohen's and Mitchell's show up more than any others: 64 times for Mitchell and 38 for Cohen. The names of Butkiewicz, Perkins, Italiano, Saathoff, Bruvold and businessmen Dan Shea and Carl DeMaio together appear about 120 times.

Saathoff, a former pension board member, faces felony conflict-of-interest charges for his vote in 2002 to continue underfunding the pension system while standing to gain large retirement benefit increases.

The Union-Tribune obtained the calendars under the California Public Records Act and Proposition 59. That ballot measure, approved last year, made access to government records and meetings a constitutional right.

The count doesn't include phone calls, drop-in meetings, social events and meetings with other City Council staffers who specialize in particular issues. Lobbyists said they have many of these types of interactions with council offices.

Lobbying is a critical part of the political process. Elected officials say they need lobbyists to educate them on the issues, and constituents employ lobbyists to represent their viewpoints. But the process has to be open, city ethics officials said.

"It's profoundly important to know the people that did get access before they vote," said Stacey Fulhorst, executive director of the city's Ethics Commission, which is preparing to overhaul the city's lobbying rules. "That's important to the public to assess their public officials."



HOWARD LIPIN / Union-Tribune
Bradford Barnum, with Associated General Contractors, conferred with lobbyist John Dadian (right) at the Chamber of Commerce.

During the corruption trial, Malone's lawyer argued that his client wasn't required to register as a lobbyist because he didn't earn the threshold amount of money per quarter.

Malone was snagged not by the Ethics Commission but by the FBI, which had learned through an informant that strip club owner Michael Galardi was illegally reimbursing contributors to council campaigns. Malone was bundling and delivering the contributions, which Galardi described as "bribes."

It's unlikely that the Ethics Commission, with its limited resources, would have caught up with Malone. But even if it had, critics who include city officials and longtime registered lobbyists such as Marston and John Dadian say the ordinance governing lobbyists is weak to the point of being ineffective.

They say the law isn't applied evenly and that its rules are easily circumvented



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by those who call themselves consultants, for example, rather than lobbyists. Even lobbyists who register aren't required to say whom they approach. Campaign donations they make or fundraisers they organize need not be reported.

Jerry Butkiewicz
distinguishes between
lobbyists and advocates.

The reporting debate

San Diego's rules define lobbying as communicating directly with a city official to influence a decision on behalf of another person.

Lobbyists who meet the financial minimum must file quarterly reports with the City Clerk's Office identifying their employer, their clients, the specific municipal decision in question and any expenses or gifts to officials. They also must check a box indicating a range of earnings.

Registered lobbyists in San Diego represent about 500 clients, including developers; churches; hotels; charities; retailers such as Home Depot, Wal-Mart and Costco; the Chargers; San Diego Gas & Electric Co.; universities; small companies; banks; high-tech and biotech companies; and health care companies.

Not surprisingly, the résumés of most lobbyists include stints as elected or appointed public officials, staff members for officials, or both.

There's no consensus on whether leaders of labor unions, nonprofit organizations and community groups who routinely meet with elected officials and their staffs should qualify as lobbyists.

Labor advocate Cohen said: "I don't get paid to lobby. That's not my job title. I get paid to advocate for the issues that we believe in – better wages for workers, more health care, more affordable housing."

Butkiewicz said he doesn't consider himself a bona fide lobbyist, either.

"When you use the word 'lobbyist,' I don't think lobbyists run food banks, run labor council meetings, run training programs for workers," he said. "Ninety-nine percent of my job is running the labor council."

Butkiewicz met at least 27 times in two years with council members or their chiefs of staff, according to their calendars. He met most often with Zucchet's office – five times – just once with Councilman Brian Maienschein and three or four times with the others. He ranks fourth on the list of frequent visitors, below Mitchell, Cohen and Jim Bartell, a former Santee councilman and former San Diego council aide.

The calendars show that Mitchell had the most appointments and the subjects included the living-wage law, housing matters, the Chargers, public art, the "strong mayor" form of government and the Mount Soledad cross. Mitchell, who announced last week that he would leave the chamber to work for SDG&E and Southern California



NANCEE E. LEWIS / Union-Tribune
Las Vegas lobbyist Lance Malone left federal court after being convicted in July of funneling illegal campaign contributions to San Diego councilmen. He was not registered to lobby in San Diego.

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Gas Co., did not return calls seeking comment for this story.

Cohen's meetings were mostly related to the living-wage ordinance. But he also met about proposed restrictions on "big box" retail stores and the controversial housing project at Ballpark Village, to be built by JMI Realty, which is the development company of Padres owner John Moores, and Lennar-San Diego Urban Division.



JOHN GIBBINS / Union-Tribune

Donald Cohen, a labor advocate with easy access to San Diego public officials, does not believe he is a traditional lobbyist.

The calendars indicated that Butkiewicz met with various officials about the pension fund, the wage law, the Chargers, various labor union issues and stagehands at the North Park theater. Most officials didn't indicate on calendars a reason for meetings.

On the living-wage proposal, the labor leader acknowledged stumping for passage of the law: "I did talk with City Council members about how we thought it was important. I was more there as an activist than as a labor council guy, you know what I mean."

Asked whether the public should be apprised of his activities through the lobbyist registration, Butkiewicz said, "Isn't my agenda written on my shirt when I walk in the room?"

But that argument doesn't convince some registered lobbyists.

"I do think it is ridiculous to say because they think they're doing it as a public benefit, w that they are not a lobbyist," Dadian said. "If they are trying to influence public officials and they're getting paid for it, they are professional lobbyists."

Little has changed

The corruption verdicts have brought subtle changes to the way politicians do business at City Hall. Councilman Scott Peters said he adds an extra line on thank-you letters to contributors, to make sure they don't expect anything in return: "My campaign promise to you is an open mind and an open door, and nothing more."

Councilwoman Donna Frye said she's more careful to "lay the ground rules out real clear" to those with whom she meets, "because people like to misstate my positions."

But little else has changed in the city's political culture since Malone, Inzunza and Zucchet were convicted in July. Not one elected official has called for lobbying reform.

Observers suggest this is because the city is distracted by numerous scandals, federal investigations and financial crises. And those in politics are sharply divided over the outcome of the trial, and whether the guilty verdicts mean the city's political system is also corrupt.

At the trial, longtime registered lobbyist Mitch Berner, once an aide to former county Supervisor Susan Golding and former Councilwoman Barbara Warden, testified for the defense that the actions of the councilmen and Malone were common practice. His message seemed to be: Everyone else is doing it.

Even after the verdicts, Inzunza and Zucchet continued to proclaim innocence, saying they were merely

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doing their jobs as legislators by meeting with a lobbyist on an issue they supported. It's not unusual to accept campaign contributions and later vote on a matter that benefits a contributor, they said. The councilmen said they were stunned by the convictions, and a lot of lobbyists were, too.

The lobbyists were also shocked by Malone's behavior.

"I think it was embarrassing to most people who are good lobbyists to even have people think for a moment that most of us behave in the fashion that Lance Malone did," said Michael McDade, a longtime registered lobbyist, former port commissioner and staffer for Roger Hedgecock when he was mayor.

Frye says the culture that led to the corruption remains.

"It's cronyism. It's more like a clique in high school, where there were the kids that had access and kids that didn't," she said. "For some reason I think people haven't moved beyond some of the stereotypes and that culture."

City Attorney Michael Aguirre said the corruption trial revealed the dark side of politics.

"I think these bad practices have become a way of performing public business in San Diego," he said.

Deputy Mayor Toni Atkins said she didn't agree that the practices exposed at the corruption trial represent the way business is normally conducted.

"I get contributions from people that support affordable housing because they know I care about it," she said. "Do I care because these people give me money, or because it's relevant and I've always been interested in it? I don't think there are easy answers. We all need to hold ourselves and each other accountable."

What to do

Many cities across the United States are implementing new lobbying regulations or strengthening existing laws. Locally, only the city of San Diego, the county and the Port District require lobbyists to register. Oceanside is considering an ordinance.

San Diego's rules were enacted in 1973 and revised in 1998.

Portland is considering a lobbying ordinance, and New York City, Chicago and Los Angeles have one. Last year, the Los Angeles law was strengthened in the wake of abuses, making it one of the nation's toughest.

In San Diego, the Ethics Commission, created in 2001, has been planning to revamp the lobbying ordinance since before the trial, executive director Fulhorst said.

It plans to consider issues related to fundraising and campaign contributions by lobbyists, whether registration requirements are adequate, and "whether the ordinance sufficiently identifies the persons and organizations that are involved in lobbying activities in the City," said Dorothy Leonard, chairwoman of the commission.

Frye, who has made open government a platform for her City Council and mayoral candidacies, said she would shift the burden of disclosure from lobbyists to the elected officials, much like the California

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Coastal Commission does.

Before voting, each commissioner is required to disclose who he or she has communicated with about the matter at hand and the essence of the conversation.

Mayoral candidate Jerry Sanders said he favors requiring anyone lobbying city officials to make those efforts public.

"The more disclosure, the better," he said. "It just makes it a more honest process."

Sanders said he would require the disclosure of gifts and campaign contributions by registered lobbyists and contractors who have business before the council, and he would mandate ethics training for lobbyists.

Registered lobbyist McDade sees no problem with greater disclosure.

"People who are doing a legitimate job of presenting information to government officials should not have to worry about whether the public knows if they've talked to them," he said.

"And the public takes a great deal of comfort knowing what input the official has had before they vote. Put the responsibility on the official to disclose who they've discussed things with."

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ATTACHMENT 7

February 11, 2007

Congress Finds Ways to Avoid Lobbyist Limits

By DAVID D. KIRKPATRICK

WASHINGTON, Feb. 10 — The 110th Congress opened with the passage of new rules intended to curb the influence of lobbyists by prohibiting them from treating lawmakers to meals, trips, stadium box seats or the discounted use of private jets.

But it did not take long for lawmakers to find ways to keep having lobbyist-financed fun.

In just the last two months, lawmakers invited lobbyists to help pay for a catalog of outings: lavish birthday parties in a lawmaker's honor (\$1,000 a lobbyist), martinis and margaritas at Washington restaurants (at least \$1,000), a California wine-tasting tour (all donors welcome), hunting and fishing trips (typically \$5,000), weekend golf tournaments (\$2,500 and up), a Presidents' Day weekend at Disney World (\$5,000), parties in South Beach in Miami (\$5,000), concerts by the Who or Bob Seger (\$2,500 for two seats), and even Broadway shows like "Mary Poppins" and "The Drowsy Chaperone" (also \$2,500 for two).

The lobbyists and their employers typically end up paying for the events, but within the new rules.

Instead of picking up the lawmaker's tab, lobbyists pay a political fund-raising committee set up by the lawmaker. In turn, the committee pays the legislator's way.

Lobbyists and fund-raisers say such trips are becoming increasingly popular, partly as a quirky consequence of the new ethics rules.

By barring lobbyists from mingling with a lawmaker or his staff for the cost of a steak dinner, the restrictions have stirred new demand for pricier tickets to social fund-raising events.

Lobbyists say that the rules might even increase the volume of contributions flowing to Congress from K Street, where many lobbying firms have their offices.

Some lawmakers acknowledge that some fund-raising trips resemble the lobbyist-paid junkets that Congress voted to prohibit.

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Jennifer Crider, a spokeswoman for the Democratic Congressional Campaign Committee, said its leaders had decided to stop holding fund-raising events for lobbyists with political action committees because of the seeming inconsistency.

So the committee canceled its annual Colorado ski weekend for lobbyists and lawmakers to raise money for the next campaign. Gone, too, is its Maryland hunting trip with Representative John D. Dingell of Michigan, the avid hunter who is chairman of the House Energy and Commerce Committee.

But other Congressional party campaign committees have not stopped their events, including the Democratic Senatorial Campaign Committee's annual Nantucket weekend for donors who contribute \$25,000. And individual lawmakers are still playing host to plenty of events themselves.

Senator Lindsey Graham, a South Carolina Republican who sometimes invites lobbyists to join him for fund-raising hunting trips, called such events an innocuous fact of life.

"If you are not going to have publicly financed elections and you are getting your support from private individuals — which I believe in — I don't see any problem with having events where private individuals who give you money can talk to you," said Mr. Graham, who like the other senators quoted in this article voted for the ethics reform. He added, "Hunting is a very popular attraction in South Carolina."

Representatives John R. Kuhl Jr. of New York and Greg Walden of Oregon, both Republicans, each recently invited lobbyists to a rock concert by Bob Seger and the Silver Bullet Band. And three Republican lawmakers, Mr. Walden and Representatives Darrell Issa and Mary Bono of California, have invited lobbyists to join them next month at a Who concert in Washington.

"They're her favorite rock 'n' roll band," said Frank Cullen, Ms. Bono's chief of staff.

Among Democrats, Senator Thomas R. Carper of Delaware recently returned from his annual ski trip to the Ritz-Carlton Bachelor Gulch in Beaver Creek, Colo. Senator Max Baucus, a Montana Democrat, just got back from a skiing and snowmobiling trip to his state and has planned two golfing and fly-fishing weekends as well. Expeditions of lobbyists attend each trip. The top prices for the events are meant for lobbyists with political action committees.

Meredith McGehee, policy director of the Campaign Legal Center, which advocates for tighter campaign finance rules, said that organizing a fund-raising trip was not the same as accepting a free vacation. But she added: "At the end of the day, it is the same thing."

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Representative Eric Cantor, a Virginia Republican famous on K Street for his annual fund-raising weekends in Beverly Hills and South Beach, has recently invited lobbyists to join him for some expensive cups of coffee. A \$2,500 contribution from a lobbyist's political action committee entitles the company's lobbyist to join Mr. Cantor at a Starbucks near his Capitol Hill office four times this spring.

"What's next? Come help me pick up my dry cleaning?" said Massie Ritsch, spokesman for the Center for Responsive Politics, a group that tracks political fund-raising.

The excursions would be illegal under the new ethics rules if lobbyists or their employers paid for them directly. (The rules, passed by both houses in early January, have already taken effect in the House and are expected to take effect in the Senate later this spring.) And some outings involving personal entertainment or recreation for lawmakers could also run afoul of legal restrictions on the personal use of campaign money if they were paid for by a lawmaker's re-election campaign.

But they are allowed, and increasingly common, because of a combination of loopholes. First, the ethics rules restrict personal gifts but not political contributions, so paying to attend a fund-raiser is still legitimate. Second, the "personal use" restrictions apply to lawmakers' re-election campaigns but not to their personal political action committees, which can spend money on almost anything. Lawmakers use their personal PACs to sponsor most of the events. (Lawyers disagree about whether Congressional ethics rules restrict personal use of members' PACs.)

The lawmakers' so-called leadership PACs began proliferating about two decades ago, initially as vehicles for senior members of Congress to build loyalty among their colleagues by funneling money to their campaigns.

These days, however, even the newest members of Congress usually start them. Two newly elected Democratic senators, Claire McCaskill of Missouri and Jim Webb of Virginia, already have. And many use them mainly to pay for travel or miscellaneous other costs.

Over the last two years, the roughly 300 PACs controlled by lawmakers raised a total of about \$156 million and used only about a third of that on federal campaign contributions, according to the Center for Responsive Politics, a group that tracks political fund-raising.

Vacationlike fund-raising events with lobbyists are not new. Former Representative Tom DeLay's trips to Puerto Rico were legendary on K Street, for example. But the new ethics rules barring lobbyists from treating lawmakers to less-expensive amusements have given new

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importance to such getaways.

"I have to have some personal contacts to be a lobbyist," said James Dyer, a lobbyist at the firm of Clark & Weinstock. "If the only ticket in terms of contact is these fund-raising events, it is going to be costly," Mr. Dyer said. "The fund-raising part of our lives is a very expensive tool."

Thomas Susman, a lawyer who was an editor of the American Bar Association lobbying manual, said that at a recent presentation about the new rules to the lobbyists trade group, "the biggest question was, Is this going to drive everything to the fund-raising side? Is that going to be the way to have social contact with members?"

Some members of Congress said it would not bother them if the upshot of the new rules turned out to be more contributions.

"I am not going to hide from the fact that we have to raise money," said Representative Devin Nunes, a California Republican who has invited donors to his political action committee on a wine-tasting tour in June, modeled after the movie "Sideways." "Only a moron would sell a vote for a \$2,000 contribution," Mr. Nunes said.

Fund-raising consultants for both parties said they saw a golden opportunity. "We are definitely seeing an increase in the number of events across the board," said Dana Harris of Bellwether Consulting, a Republican firm that specializes in courting lobbyists' political action committees. "Fund-raising events will provide a safe haven for lobbyists to talk to members."

Among the coming events Ms. Harris's firm helped organize: a trip this month to the Yacht and Beach Club Resort at Disney World for Senator Mel Martinez of Florida, for a \$5,000 PAC contribution, and a May trip to the Robert Trent Jones Golf Club in Virginia for Senator Richard M. Burr of North Carolina, for \$2,500 a head.

Some private jet companies are trying to capitalize on the rules as well. Lawmakers can no longer fly on a company's corporate jet and then reimburse the owner at a discount. But lawmakers can still use their PACs to pay the actual cost for the use of jets, as Mr. Cantor and others have done.

Marco Larsen, vice president for publicity at Blue Star Jets, a broker that sells single flights on private planes, said his company planned to hold an event in Washington to promote its services to members of Congress. Because of concerns about appearances, Mr. Larsen said, "We wanted to stay away right after the rules were passed, but I think it is a better time now."

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Lawmakers are usually reluctant to talk about their fund-raising events. Asked in an interview in the Capitol why he was taking lobbyists on a Montana hunting trip, Mr. Baucus said only, "To show off the beauty of our state," then retreated behind a guarded door.

Mr. Martinez, who will be spending next weekend with lobbyists at Disney World, said, "I've heard from many other members that they have had very successful weekend events." He added, "People can bring their families to it and bring their children, and it's going to be fun."

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The Bankrollers:

**Lobbyists' Payments to the Lawmakers They Court,
1998 - 2006**



Congress Watch

May 2006

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Introduction

Lobbyists and the political action committees of their firms have contributed at least \$103.1 million to members of Congress since 1998.¹ This figure is more than 90 percent higher than what is reported by the Center for Responsive Politics (CRP), which has been the most authoritative source to date, because this study's methodology cast a wider net to capture lobbyists' contributions. (The methodology used for this study is discussed in detail in Appendix II.)

The contributions of the top 50 lobbyists are particularly striking. Since 1998, these lobbyists have given an average of more than \$207,000 to members of Congress, or \$25,890 per year. This is equal to more than 60 percent of the \$42,409 median income of American households in 2002, the midpoint of the years studied. In short, this means that these 50 lobbyists have earned so much money in exchange for procuring special favors for their clients that they have been able to absorb more than three-fifths of the average family's pre-tax income as a cost of doing business.

These lobbyists have managed to accomplish remarkable feats on Capitol Hill.

Among the top 10 lobbyist-donors to members of Congress, one has been instrumental in perpetuating the "synfuel" tax credit, which has allowed companies to bilk the Treasury out of \$1 billion to \$4 billion per year merely by spraying coal with diesel fuel or other substances, and then claiming a tax credit for creating a "synthetic" fuel. Another lobbyist was instrumental in fashioning the infamous \$30 billion Boeing air refueling tanker proposal, which came within an eyelash of passage. The near-deal was subsequently deemed one of the worst procurement episodes in recent decades and landed two people in prison. A third lobbyist was part of a successful effort to persuade Congress to approve a proposal relaxing rules on exports of bomb-grade uranium, overcoming the measure's previous bi-partisan opposition due to its potential to accelerate the proliferation of nuclear materials.

The three industries that have paid the most in fees to the firms of top lobbyist-contributors are finance, defense and, surprisingly, education. For example, the firm of Stewart Van Scoyoc (who ranks No. 1 in lobbyists' contributions to members of Congress, at nearly \$340,000), represents more than 50 universities. The Science Coalition (a group of 60 universities), has paid more than \$2.6 million in lobbying fees since 2001 to the firm of the No. 2 most generous lobbyist-contributor, Dan Mattoon.

Municipalities also have relied on influence peddlers to increase their success at procuring federal dollars. The resort city of Orange Beach, Ala., for example, has paid \$60,000 a year since mid-2003 to Van Scoyoc's firm to press its case in Washington, D.C. Orange Beach officials credit their lobbyist with netting the city \$3.4 million in federal earmarks.

Taxpayer-funded entities' use of influence peddlers to vie for federal funds may be partly responsible for the alarming increase in congressional earmarks, which soared from \$23.2 billion in 1994 to \$64 billion in 2006.

Lobbyists are plainly expected to make campaign contributions in exchange for the access and favors they seek. Mattoon, for example, was among a small group of lobbyists who met in January 2004 with then-House Majority Leader Tom DeLay (R-Texas) to discuss ways to increase lobbyists' contributions to Republican lawmakers. The meeting was held at the infamous Signatures restaurant owned by now-disgraced lobbyist Jack Abramoff. "There has been a concern that not enough folks who are out there making money based on their relation to the Hill are giving enough of their own money to the Republican Party," a GOP aide said at the time.

Kenneth Kies, the maestro behind the synfuel boondoggle and the fifth-ranking lobbyist-contributor to Congress, likewise acknowledged that lobbyists believe they are expected to give money in exchange for "credit," the all-important chit in the lobbyist's toolkit. But the ban on soft-money contributions has required lobbyists to put more of their own money into the pot, unlike in the past, when "Lobbyists who never actually pulled out their own checkbooks could claim credit for their clients' soft money," Kies said.

The need to contribute for credit is revealed when one studies the donations of trade association chiefs, who are paid salaries, versus those of for-hire lobbyists, who rely on fees from clients. Despite their high pay and intrinsic role in Washington's political culture, trade association lobbyists are far less likely to reach into their own pocketbooks to make contributions. Instead, they can rely on the heft of their organizations and the contributions of their members. Of the 22 lobbyists who lead (or recently lead) trade associations and who earn more than \$1 million annually, according to the most recent salary survey of the *National Journal*, only two ranked among the top 300 lobbyist-contributors to Congress – and one of them is now retired.

Of course, contributions from personal checking accounts are just a tiny part of the role lobbyists play in bankrolling members of Congress. Lobbyists also serve as unpaid foot soldiers who dutifully host fundraisers and engage in other activities to solicit campaign contributions – often from their clients – for lawmakers. For example, former Freddie Mac lobbyist Mitch Delk, who has contributed \$41,950 to lawmakers since 1998, claimed that fundraisers he coordinated steered nearly \$3 million to members of the House Financial Services Committee from 2000-2003. Denny and Sandra Miller, a lobbyist couple that has contributed nearly \$300,000 to members of Congress since 1998 (ranking them fourth among lobbyists' households), once held a pair of fundraisers for Sen. Ted Stevens (R-Alaska) that raised \$160,000. The Millers were prohibited at the time from contributing more than \$4,000, total, themselves. More recently, Denny Miller was among 14 lobbyists who coordinated a fundraiser for Stevens' foundation that raised at least \$2 million.

The role of lobbyists as fundraisers is so ubiquitous that Van Scoyoc's firm leases out a room with a view of the Capitol dome to other lobbyists to hold fundraisers.

Some lawmakers are sensitive to the appearance of impropriety stemming from these lobbyist-coordinated fundraisers. In the midst of the Abramoff scandal, Rep. Ray LaHood (R-Ill.) sent a letter to each of the lobbyists who had previously sponsored fundraisers for him, informing them that he would no longer accept their services. "I believe this could be perceived as a special relationship, and I am confident all of us want to avoid this perception," he wrote.

Not everyone was as concerned about such perceptions. "I just want to wake up and have this nightmare be over," one lobbyist-recipient of the letter said, referring to the reform spirit that had briefly swept the capital.

This study points to the need for two policy changes. First, lobbyists should be banned, at once, from making substantial contributions to lawmakers, and from funneling contributions to them. The merit of this proposal as a means of reducing corruption is self-evident. Similar measures have been enacted at the state level and upheld by the courts, including a federal court.

Second, the time has come for publicly financed campaigns. About \$4 billion was spent in the 2004 election cycle, not just in campaign contributions, but also in contributions to soft-money Section 527 groups and expenditures for the national conventions. If elections continued to cost \$4 billion per cycle (even for non-presidential election years), a fully publicly financed campaign system would cost taxpayers about \$2 billion a year.

This might sound like a lot of money. Then again, consider that just three recent years of the synfuel tax credit cost taxpayers an estimated \$9 billion – enough to pay for two cycles of publicly funded elections. The Boeing air tanker deal would have poured a whopping \$30 billion into the lease of airplanes that the military didn't need. These are just two examples badly flawed policies that have been propelled by Washington's money machine. Billions more dollars are undoubtedly lost to corporate welfare measures won by the quasi-bribes of campaign contributions, leaving us with a choice of paying higher taxes today or heaping billions more onto the national debt, a practice that will inevitably result in ever higher taxes tomorrow. Neither option is acceptable.

Executive Summary

Section I: Recipients of Lobbyists' Campaign Contributions

- **Lobbyists have given more than \$100 million to members of Congress since 1998.** Lobbyists and the political action committees (PACs) of lobbying firms have contributed at least \$103.1 million to members of Congress since 1998.
- **The percentage of lobbyists making personal contributions is small.** Just 27.1 percent (7,350) of the 27,121 people who registered as lobbyists since 1998 have contributed at least \$200 to a single congressional candidate or PAC. Only contributions of \$200 or more are reported by the FEC.
- **Just over 6 percent of lobbyists account for more than four-fifths of the money lobbyists have contributed to members of Congress since 1998.** Just 6.1 percent (1,641) of lobbyists have contributed \$10,000 or more to members of Congress since 1998. This select group accounts for 83.4 percent of the total contributed.
- **Just 0.2 percent of lobbyists account for more than 13 percent of the money lobbyists have contributed to members of Congress since 1998.** The imbalance in contributions by lobbyists is even more striking when one considers contributions of the very largest donors. The 50 most generous lobbyist-contributors account for only 0.7 percent of lobbyists who made contributions of \$200 or more, and just 0.2 percent of all lobbyists. Yet, these lobbyists have been responsible for 13.4 percent of all dollars contributed by lobbyists to members of Congress since 1998.
- **Lobbyists' contributions are on the rise.** Contributions by lobbyists and their firms' PACs almost doubled from \$17.8 million in the 2000 election cycle (the earliest election cycle for which comprehensive data is available) to \$33.9 million in the 2004 election cycle. (1998 is used as the starting point for this study because it is the earliest year for which lobbying disclosure data is available online, but data is not available for the entire cycle.) Some, but not all, of this increase can be attributed to the 2002 Bipartisan Campaign Reform Act (BCRA), which doubled individual contribution limits beginning in the 2004 cycle. So far in the 2006 cycle, lobbyists and their PACs are on track to contribute \$37.4 million. That would represent more than a 10 percent increase over 2004. The increase will likely be greater, however, because the pace of contributions usually increases as election day draws nearer.
- **Lobbyists' have given more to Republicans than Democrats since 1998.** Since the 1998 election cycle, the contributions by lobbyists and their firms' PACs to Republicans have outpaced contributions to Democrats 56.6 percent to 43.4 percent. Thus far in the 2006 cycle, contributions to Republicans exceed contributions to Democrats 61.5 percent to 38.5 percent.
- **Thirty-six members of Congress have received a half-million dollars or more from lobbyists and their PACs since 1998.** Former Sen. Tom Daschle (D-S.D.), Rep. Tom

DeLay (R-Texas), Sen. Rick Santorum (R-Pa.) and Sen. Arlen Specter (R-Pa.) have each received more than \$1 million. Of the 36 members in the half-million dollar club, 21 are Republicans and 15 are Democrats.

- **Many lobbyists give heavily to both parties.** Of the 373 lobbyists' households that have given at least \$50,000 to members of Congress, 10.2 percent (38) have given at least two-fifths of their money to each party. Of the nearly 1,000 lobbyists who have contributed at least \$20,000 to members of Congress since 1998, more than 13 percent (132) have given at least two-fifths of their contributions to each party.
- **Some former-members-turned-lobbyists become big contributors.** The households of 11 former members of Congress who are now lobbyists have contributed \$100,000 or more to members of Congress since 1998. (Married former Reps. Bill Paxon and Susan Molinari, both R-N.Y., are treated as a single household and their contributions are merged in this study.)
- **Several big-donor lobbyists raised \$100,000 or more for Bush or Kerry.** Of the 132 lobbyists who have given at least \$100,000 to members of Congress since 1998, nine were designated as "Rangers" or "Pioneers" by George W. Bush in his 2004 campaign, signifying that they raised at least \$100,000 for Bush by soliciting contributions of others. These lobbyists have collectively given more than \$1.5 million to members of Congress. Three lobbyists contributing \$100,000 or more to members of Congress since 1998 raised at least \$100,000 for the 2004 presidential bid of Sen. John Kerry (D-Mass.). These lobbyists have contributed \$506,476 to members of Congress.
- **Personal contributions from lobbyists are just the tip of the iceberg.** The campaign contributions lobbyists make from their own checkbooks are just a fraction of the contributions they ultimately provide to lawmakers. Lobbyists play a far more significant role in funding lawmakers' campaigns by coordinating fundraisers and arranging for contributions from others. While no comprehensive data exists on lobbyists' role in soliciting campaign contributions, anecdotal information suggests that the amount dwarfs their personal contributions:
 - Former Freddie Mac lobbyist Mitchell Delk contributed \$41,950 to members of Congress from 1998 through 2006, ranking him No. 454 among lobbyist-contributors. But Delk has claimed that he held more than 75 events for members of the House Financial Services Committee from 2000-2003, and that those events raised nearly \$3 million.
 - Disgraced lobbyist Jack Abramoff contributed \$180,503 to members of Congress from 1998 through 2005. That's a healthy sum that places him 30th among lobbyist-contributors. But that's hardly a measure of his influence. It's only 7 percent of the \$2.6 million that Abramoff and his clients contributed to members of Congress and congressional candidates between 1997 and the end of 2004, according to a CRP analysis. (Note: the CRP calculation covers a slightly different time period than that

covered in this study and also includes contributions to candidates who are not in Congress.)

- In 1996, the lobbyist couple Denny and Sandra Miller hosted a pair of fundraisers for Sen. Ted Stevens (R-Alaska). The total the Millers could have contributed under the campaign finance law at the time was \$4,000. The fundraisers garnered Stevens \$160,000.
- The 12 lobbyists who raised at least \$100,000 for Bush or Kerry in 2004 (and who contributed at least \$100,000 to members of Congress) were limited by law to only \$2,000 each in personal contributions. But they managed to raise at least 50 times that amount. Four were able to funnel at least \$200,000 to Bush – at least 100 times what they were permitted to contribute personally. While this example pertains to presidential campaign contributions, rather than the congressional contributions that are the subject of this study, it illustrates lobbyists' fundraising power.

Section II: Profiles of the Top 20 Lobbyist Contributors

The lobbyists who have given the most money to members of Congress since 1998 have played roles in some of the most egregious legislative boondoggles in recent years. Here are some examples:

- Denny Miller was one of two lobbyists cited by the *New York Times* in 2001 who helped negotiate language that called for \$30 billion in military spending to lease air refueling tankers from Boeing Co., one of Miller's clients.

The tanker proposal eventually imploded amid revelations that 1) it would cost the government more to lease the planes than to purchase them outright, 2) the military didn't truly need the planes, and 3) the procedure used in negotiating the deal was rife with violations. The episode has achieved ignominy as one of the worst procurement abuses in recent decades and has resulted in prison sentences for a Boeing executive and a Pentagon official.

- The firms for which lobbyist Kenneth Kies has worked took in nearly \$2.4 million in lobbying fees from the Council for Energy Independence (CEI) and nearly \$5.4 million from General Electric since 1998. The CEI, which Kies directs and of which General Electric is a member, exists for one reason: to lobby for continuation of a law that allows companies to collect \$1 billion to \$4 billion in tax credits annually for manufacture of synfuel.

Although the law creating the synfuel tax credit was passed to encourage innovative ways of producing natural gas and other fuels, companies have exploited the law to gain tax credits merely by spraying coal with diesel fuel (or other substances, such as pine tar) and labeling the resulting product synfuel. The top recipient of Kies' contributions has been Rep. Jim McCrery (R-La.), who has lobbied the IRS and the Treasury Department not to crack down on synfuel makers.

- James Massie's Alpine Group was so successful at winning favorable treatment from the House Energy and Commerce Committee that Rep. Edward Markey (D-Mass.) once singled out the firm during a hearing by demanding its members raise their hands and identify themselves. The committee ended up approving an amendment that loosened the constraints on exporting bomb-grade uranium, a measure previously rejected amid criticism by members of both parties that it would accelerate the worldwide proliferation of nuclear materials. The amendment was supported by the Council on Radionuclides and Radiopharmaceuticals (CRR), which has paid the Alpine Group more than \$2.9 million in lobbying fees since 1998, and was a boon to Ottawa-based MDS Nordion, the leading producer of a certain type of isotope and a member of the CRR. "To save one Canadian company some money, we're willing to blow a hole in our nonproliferation policies," Markey complained.

Section III: Legal Justifications for Limiting Lobbyists' Gifts

- **Public Citizen calls for significantly limiting lobbyists' ability to funnel money to lawmakers.** Lobbyists should be prohibited from making significant contributions to lawmakers or from arranging payments to lawmakers or entities they control. Public Citizen proposes that lobbyists be prohibited from:
 - Making contributions of exceeding \$200 per election to a lawmaker's campaign committee or from contributing more than \$500 per election cycle to national parties or leadership PACs;
 - Soliciting, arranging or delivering contributions to federal candidates or from serving as officials on candidate campaign committees and leadership PACs; and
 - Paying or arranging payments for events "honoring" members of Congress and political parties, such as parties at national conventions, and from contributing or arranging contributions to entities established or controlled by members of Congress, such as foundations.
- **The Supreme Court has recognized the right to treat lobbyists differently.** In a 1954 opinion upholding the 1946 Federal Regulation of Lobbying Act, the Court acknowledged the legality of imposing a modest regulatory scheme on a certain class of people – lobbyists – engaging in the constitutionally protected activity of petitioning the government.
- **Courts have upheld certain restrictions on contributions from lobbyists.** At least five states have implemented laws imposing year-round restrictions on campaign contributions from lobbyists: California, Kentucky, Tennessee, South Carolina and Alaska.
 - The California Supreme Court recognized that a state has a compelling interest in "ridding the political system of both apparent and actual corruption and improper influence" by banning all contributions from lobbyists, but the court invalidated the statute as overly broad. The court noted that while "either apparent or actual corruption might warrant some restriction of lobbyist associational freedom, it does not warrant total prohibition of all contributions by all lobbyists to all candidates."

In response, California implemented a somewhat more narrowly drawn statute, prohibiting lobbyists from making campaign contributions to those whom they lobby. The Fair Political Practices Commission (FPPC) interpreted this provision to mean that lobbyists are banned from making contributions to candidates for elective office in the branch of government that they lobby. In other words, lobbyists are prohibited from making campaign contributions to candidates for the legislature, if they are registered to lobby the legislature, of candidates for executive office, if they are registered to lobby the executive branch, or both, if they lobby both the legislative and executive branches. A federal district court upheld this interpretation of the law.

- In February 2006, Tennessee approved reform legislation prohibiting direct campaign contributions from lobbyists to state candidates and officeholders.
- The Alaska Supreme Court upheld a restriction on campaign contributions from lobbyists to state legislators outside the district in which the lobbyist resides.
- **Courts have upheld contribution bans that apply to particular sectors in which there has been a history of corruption or the appearance of corruption.** A “pay-to-play” restriction that bans campaign contributions from potential contractors to those responsible for awarding the contracts has been upheld by a federal court. Eight states have banned contributions from gambling interests. Other states have passed restrictions on campaign contributions from insurance agents, licensed food operators and public utilities to certain candidates.
- **A legal basis exists for prohibiting lobbyists from soliciting funds.** None of the state laws or court decisions discussed above focused on restrictions of particular classes of persons soliciting or arranging campaign contributions from others. There appears to be a fairly firm constitutional basis, however, for restricting comparable classes of persons from soliciting or arranging campaign contributions with other people’s money. The First Amendment issues raised in the landmark court decisions on campaign financing, such as the 1976 *Buckley* decision and the 2003 *McConnell* decision, have focused on how contribution restrictions may affect a person’s ability to exercise his or her own free speech with their own money.

The *McConnell* decision, which upheld the Bipartisan Campaign Reform Act (BCRA) went even further and explicitly upheld the bans on national party committees and federal officeholders soliciting and raising “soft money” and directing these contributions to others.

Section I: Recipients of Lobbyists' Campaign Contributions

Lobbyists and lobbying firm PACs have made more than \$103 million in campaign contributions to members of Congress since 1998. Nearly three-fourths of this total, \$77.1 million, came out of lobbyists' personal bank accounts. The remaining \$26 million came from the PACs of lobbying firms, whose funds typically are contributed by their employees.² [See Figure 1]

This figure is more than 90 percent higher than the estimate made by the Center for Responsive Politics (CRP), which does not use as wide a net to capture lobbyists' contributions.³ Calculating lobbyists' contributions by matching the names of contributors reporting to the FEC with the names of individuals registering as lobbyists with the secretary of the Senate was an arduous task that had never before been done.

The \$103.1 million figure reported in this study almost certainly understates reality because it was gleaned primarily by examining the contributions of people who live in the Washington, D.C., metropolitan area. A few additional contributions were captured by including those from people who live throughout the country who worked for firms identified by CRP as lobbying shops, and others who reported occupations on their FEC forms such as "lobbyist," "government affairs" or "government relations"

Figure 1: Contributions from Lobbyists and Lobbying Firms' PACs

Type of Contribution	Contributions to Democrats	Pct. to Democrats	Contributions to Republicans	Pct. to Republicans	Total
Individual	\$33,653,566	43.7	\$43,403,903	56.3	\$77,098,331
PAC	\$11,025,444	42.4	\$14,973,486	57.6	\$26,026,680
Total	\$44,683,510	43.4	\$58,381,889	56.6	\$103,125,011

Although 27,121 lobbyists have registered with the secretary of the Senate and the clerk of the House since 1998, only about 7,350 lobbyists (27.1 percent) have contributed at least \$200 to a single congressional candidate or PAC. Only contributions of \$200 or more are reported by the FEC. [See Figure 2]

Figure 2: Breakdown of Contributions By Lobbyists

Number of Lobbyists Who Have Registered Since 1998	Number of Lobbyists Who Contributed at Least \$200	Pct. of Lobbyists Who Contributed at Least \$200
27,121	7,350	27.1

Lobbyists who have contributed at least \$10,000 to members of Congress comprise only 6.1 percent of all lobbyists and only 22.3 percent of the lobbyists who have made at least one contribution of \$200 or more. Nevertheless, they have accounted for more than fourth-fifths (83.4 percent) of all the money contributed to members of Congress by lobbyists since 1998. [See Figure 3]

Figure 3: Breakdown of Contributions By \$10,000+ Contributors

Number of Lobbyists Who Contributed at Least \$10,000	Pct. of Lobbyists Who Contributed at Least \$10,000	Pct. of \$200+ Contributors Who Contributed at Least \$10,000	Aggregate Contributions of \$10,000+ Donors	Pct. of Total Lobbyists' Contributions Given By \$10,000+ Donors
1,641	6.1	22.3	\$64,319,123	83.4

Trends: Contributions By Lobbyists Are On the Rise

The amount contributed by lobbyists has been increasing each election cycle. In 2000, the first election cycle for which complete data is available, lobbyists and the PACs of lobbying firms gave more than \$17.8 million to members of Congress. This rose to more than \$22.3 million in the 2002 cycle. In the 2004 cycle, the amount surged to over \$33.9 million. Much of the increase in the 2004 cycle can be attributed to the enactment of the Bipartisan Campaign Reform Act (BCRA), which doubled contribution limits for individuals.

Thus far in the 2006 cycle, \$21.9 million has been contributed by lobbyists. [See Figure 4] (Note: the data included in this report reflects FEC filings as of March 1, 2006. These records include few reports beyond December 31, 2005.)

Figure 4: Contributions from Lobbyists and Lobbying Firms' PACs by Cycle

Cycle	Individual	PAC	Total
1998*	\$4,881,815	\$2,332,105	\$7,213,920
2000	\$12,806,373	\$5,009,785	\$17,816,158
2002	\$16,721,558	\$5,622,540	\$22,344,098
2004	\$26,404,757	\$7,505,837	\$33,910,594
2006	\$16,283,828	\$5,556,413	\$21,840,241
Total	\$77,098,331	\$26,026,680	\$103,125,011

* Lobbyist contribution data for the 1998 cycle is incomplete because lobbyist registration data is not available for the first 14 months of the cycle.

Lobbyists Give More to Republicans Than Democrats

Since 1998, 56.6 percent of lobbyists' contributions to members of Congress have gone to Republicans. Republicans have widened their advantage in recent cycles. In 2004, Republicans enjoyed a 58.5 percent to 41.5 percent edge. So far in the 2006 cycle, Republicans enjoy a 61.5 percent to 38.5 percent advantage.

Figure 5: Lobbyists' Contributions to Republicans Versus Democrats

Cycle	Total to Democrats	Total to Republicans	Pct. to Democrats	Pct. to Republicans
1998	\$3,152,084	\$4,064,836	43.7	56.3
2000	\$8,111,544	\$9,678,102	45.6	54.4
2002	\$10,930,962	\$11,394,236	49.0	51.0
2004	\$14,081,111	\$19,814,783	41.5	58.5
2006	\$8,407,809	\$13,429,932	38.5	61.5
Total	\$44,683,510	\$58,381,889	43.4	56.6

Top Congressional Recipients of Lobbyists' Contributions

Thirty-six members of Congress – 21 Republicans and 15 Democrats – have accepted at least a half-million dollars from lobbyists and lobbying firms' PACs since 1998. Former Sen. Tom Daschle (D-S.D.), Rep. Tom DeLay (R-Texas), Sen. Rick Santorum (R-Pa.) and Sen. Arlen Specter (R-Pa.) each have received more than \$1 million.

The 36 members of the half-million dollar club include 18 senators and 18 members of the House.

The 36 members who took in at least \$500,000 from lobbyists and their PACs account for only 5.1 percent of the members of Congress who have received contributions of \$200 or more from lobbyists since 1998. Yet, the money they took in – \$26.5 million – accounts for more one-fourth of the total in contributions received by members of Congress in the time period studied.

Of the 18 senators who received at least \$500,000, 9 are Republicans and 9 are Democrats. Ten of the senators currently hold leadership positions, either in their party or in Senate committees. [See Figure 6]

Figure 6: Senators Who Received at Least \$500,000 from Lobbyists

Senator	Current Leadership Position	Individual Contributions	PAC Contributions	Total
Sen. Tom Daschle (D-S.D.) [†]		\$1,364,928	\$322,793	\$1,687,721
Sen. Rick Santorum (R-Pa.)	Republican Conference Chair	\$838,133	\$325,427	\$1,163,560
Sen. Arlen Specter (R-Pa.)	Chair, Judiciary Committee	\$739,071	\$280,246	\$1,019,317
Sen. Harry Reid (D-Nev.)	Senate Minority Leader	\$673,254	\$215,969	\$889,223
Sen. Richard Shelby (R-Ala.)	Chair, Banking, Housing and Urban Affairs Committee	\$741,080	\$145,902	\$886,982
Sen. Conrad Burns (R-Mont.)		\$612,554	\$125,314	\$737,868
Sen. Hillary Clinton (D-N.Y.) [‡]		\$615,700	\$104,777	\$720,477
Sen. Edward Kennedy (D-Mass.)	Ranking Member, Health, Education, Labor and Pensions Committee	\$555,641	\$133,745	\$689,386
Sen. Chris Dodd (D-Conn.)	Ranking Member, Rules and Administration Committee	\$526,870	\$139,353	\$666,223
Sen. Trent Lott (R-Miss.)	Chair, Rules and Administration Committee	\$523,882	\$138,750	\$662,632
Sen. Ted Stevens (R-Alaska)	Chair, Commerce, Science and Transportation Committee	\$533,378	\$99,742	\$633,120
Sen. Mary Landrieu (D-La.)		\$485,543	\$127,671	\$613,214
Sen. Richard Burr (R-N.C.) [*]		\$482,696	\$105,225	\$587,921
Sen. Maria Cantwell (D-Wash.) [‡]		\$586,636	\$276 ^{††}	\$586,912
Sen. Chuck Grassley (R-Iowa)	Chair, Finance Committee	\$430,664	\$156,033	\$586,697
Sen. Kent Conrad (D-N.D.)	Ranking Member, Budget Committee	\$431,178	\$144,529	\$575,707
Sen. Patty Murray (D-Wash.)		\$415,138	\$101,521	\$516,659
Sen. George Allen (R-Va.) [‡]		\$432,580	\$83,098	\$515,678
9 Republicans 9 Democrats		\$10,988,926	\$2,750,371	\$13,739,297

[†] Congressional service ended in 2004.

[‡] Congressional service began in 2001. Data not included for contributions received before election to Congress.

^{††} As a matter of policy, this member of Congress does not accept PAC money. Any contributions listed here were reported by the PACs, not the member. The PACs' records will likely be amended after the contributions are returned.

^{*} Served in House until 2004, began first term in Senate in 2005.

Of the 18 members of the House who received \$500,000 or more, 12 are Republicans and six are Democrats. Nine hold leadership positions, either in their party or in House committees. [See Figure 7]

Figure 7: Members of the House Who Received at Least \$500,000 from Lobbyists

House Member	Current Leadership Position	Individual Contributions	PAC Contributions	Total
Rep. Tom DeLay (R-Texas)		\$944,013	\$378,893	\$1,322,906
Rep. Dennis Hastert (R-Ill.)	Speaker of the House	\$643,384	\$283,070	\$926,454
Rep. John Murtha (D-Pa.)		\$715,550	\$153,550	\$869,100
Rep. Jerry Lewis (R-Calif.)	Chair, Appropriations Committee	\$724,033	\$95,721	\$819,754
Rep. Steny Hoyer (D-Md.)	Minority Whip	\$637,936	\$142,944	\$780,880
Rep. John Boehner (R-Ohio)	Majority Leader	\$618,933	\$115,935	\$734,868
Rep. Michael Oxley (R-Ohio)	Chair, Financial Services Committee	\$546,088	\$165,406	\$711,494
Rep. Tom Davis (R-Va.)	Chair, Government Reform Committee	\$560,262	\$112,476	\$672,738
Rep. Roy Blunt (R-Mo.)	Majority Whip	\$504,733	\$148,838	\$653,571
Rep. Don Young (R-Alaska)	Chair, Transportation and Infrastructure Committee	\$469,172	\$183,276	\$652,448
Rep. Jim Moran (D-Va.)		\$584,103	\$60,207	\$644,310
Rep. Jim McCrery (R-La.)		\$530,549	\$110,722	\$641,271
Rep. Charles Rangel (D-N.Y.)	Ranking Member, Ways and Means Committee	\$419,637	\$179,105	\$598,742
Rep. Henry Bonilla (R-Texas)		\$438,317	\$147,251	\$585,568
Rep. Edward J. Markey (D-Mass.)		\$497,408	\$69,500	\$566,908
Rep. Dave Hobson (R-Ohio)		\$436,929	\$112,476	\$549,405
Rep. Harold Rogers (R-Ky.)		\$446,022	\$98,260	\$544,282
Rep. Richard Gephardt (D-Mo.) [†]		\$409,024	\$124,714	\$533,738
12 Republicans, 6 Democrats		\$10,126,093	\$2,682,344	\$12,808,437

[†] Congressional service ended in 2004.

Top Recipients in the 2006 Election Cycle

So far, in the 2006 cycle, 36 members of Congress – 23 Republicans and 13 Democrats – have received more than \$150,000 from lobbyists and lobbying firms' PACs. Leading the pack is Sen. Rick Santorum (R-Pa.), who has received \$560,738. Next in line is Sen. Hillary Rodham Clinton (D-N.Y.), with \$417,575. Third is DeLay, who recently abandoned his campaign for reelection.

Of the top 20 Senate recipients in the 2006 cycle, 16 are up for reelection this November. The top 20 recipients consist of 10 Republicans and 10 Democrats. [See Figure 8]

Figure 8: Top 20 Senate Recipients of Lobbyists' Contributions, 2006 Cycle

Rank	Senator	Individual Contributions From Lobbyists	Contributions from Lobbying Firm PACs	Total
1	Sen. Rick Santorum (R-Pa.)*	\$401,915	\$158,823	\$560,738
2	Sen. Hillary Clinton (D-N.Y.)*	\$349,450	\$68,125	\$417,575
3	Sen. George Allen (R-Va.)*	\$317,380	\$61,098	\$378,478
4	Sen. Kent Conrad (D-N.D.)*	\$226,041	\$56,501	\$282,542
5	Sen. Conrad Burns (R-Mont.)*	\$209,316	\$59,583	\$268,899
6	Sen. Maria Cantwell (D-Wash.)*	\$255,470	\$26 ^{**}	\$255,496
7	Sen. Edward Kennedy (D-Mass.)*	\$200,897	\$47,250	\$248,147
8	Sen. Bill Nelson (D-Fla.)*	\$164,173	\$72,496	\$236,669
9	Sen. Evan Bayh (D-Ind.)	\$160,150	\$72,127	\$232,277
10	Sen. Ben Nelson (D-Neb.)*	\$145,100	\$72,496	\$217,596
11	Sen. Tom Carper (D-Del.)*	\$164,490	\$48,193	\$212,683
12	Sen. Mitch McConnell (R-Ky.)	\$151,700	\$35,000	\$186,700
13	Sen. Harry Reid (D-Nev.)	\$142,150	\$41,250	\$183,400
14	Sen. Mike DeWine (R-Ohio)*	\$130,594	\$50,500	\$181,094
15	Sen. Ted Stevens (R-Alaska)	\$141,008	\$31,000	\$172,008
16	Sen. Debbie Stabenow (D-Mich.)*	\$125,750	\$44,149	\$169,899
17	Sen. Trent Lott (R-Miss.)*	\$128,800	\$40,250	\$169,050
18	Sen. Orrin G. Hatch (R-Utah)*	\$112,700	\$45,500	\$158,200
19	Sen. John Ensign (R-Nevada)*	\$103,670	\$52,450	\$156,120
20	Sen. James Talent (R-Mo.)*	\$95,000	\$57,000	\$152,000
Total	10 Republicans, 10 Democrats	\$3,725,754	\$1,113,817	\$4,839,571

* Running for re-election in 2006

[†] As a matter of policy, this member of Congress does not accept PAC money. Any contributions listed below were reported by the PACs, not the member, and will likely be amended at some future date after the contributions are returned.

^{**} As a matter of policy, this member of Congress does not accept PAC money. Any contributions listed here were reported by the PACs, not the member. The PACs' records will likely be amended after the contributions are returned.

The landscape of lobbyists' contributions to members of the House in the 2006 cycle is more partisan; 15 of the top 20 recipients are Republicans. [See Figure 9]

Figure 9: Top 20 House Recipients of Lobbyists' Contributions, 2006 Cycle

Rank	Member of Congress	Individual Contributions From Lobbyists	Contributions from Lobbying Firm PACs	Total
1	Rep. Tom DeLay (R-Texas)	\$306,700	\$80,539	\$387,239
2	Rep. Jim McCrery (R-La.)	\$207,900	\$37,472	\$245,372
3	Rep. Henry Bonilla (R-Texas)	\$161,021	\$54,208	\$215,229
4	Rep. Roy Blunt (R-Mo.)	\$152,258	\$56,500	\$208,758
5	Rep. John Murtha (D-Pa.)	\$173,050	\$34,500	\$207,550
6	Rep. Dennis Hastert (R-Ill.)	\$128,500	\$73,100	\$201,600
7	Rep. Ben Cardin (D-Md.)	\$159,050	\$36,100	\$195,150
8	Rep. Eric Cantor (R-Va.)	\$143,270	\$37,996	\$181,266
9	Rep. Steny Hoyer (D-Md.)	\$142,772	\$35,395	\$178,167
10	Rep. Jerry Lewis (R-Calif.)	\$148,733	\$16,556	\$165,289
11	Rep. Tom Reynolds (R-N.Y.)	\$102,649	\$56,248	\$158,897
12	Rep. John Boehner (R-Ohio)	\$125,800	\$33,000	\$158,800
13	Rep. Joe Barton (R-Texas)	\$120,961	\$37,341	\$158,302
14	Rep. Dave Hobson (R-Ohio)	\$128,363	\$25,937	\$154,300
15	Rep. Bill Thomas (R-Calif.)	\$121,429	\$30,750	\$152,179
16	Rep. Richard Pombo (R-Calif.)	\$104,278	\$45,500	\$149,778
17	Rep. Tom Davis (R-Va.)	\$118,529	\$20,000	\$138,529
18	Rep. Doris Matsui (D-Calif.)	\$111,750	\$22,250	\$134,000
19	Rep. Chris Van Hollen (D-Md.)	\$124,500	\$7,000	\$131,500
20	Rep. Joe Knollenberg (R-Mich.)	\$94,755	\$22,728	\$117,483
Total	15 Republicans, 5 Democrats	\$2,876,268	\$763,120	\$3,639,388

Just One-Fifth of One Percent of Lobbyists Made 13 Percent of Contributions

The most generous lobbyists account for a strikingly large share of all contributions to members of Congress. The 50 top lobbyist-contributors account for 13.4 percent of total dollars contributed to members of Congress since 1998. Yet, they represent just 0.7 percent of all lobbyists who gave \$200 or more to a single candidate or campaign committee since 1998, and only 0.2 percent of all lobbyists who have registered since 1998. [See Figure 10]

Many Lobbyists Give Heavily to Both Parties

While many lobbyists demonstrated a party preference in their campaign giving, some have acted as equal-opportunity contributors, suggesting that their contributions were intended to influence particular members rather than to further an ideological agenda.

Of the 373 lobbyists' households that have given at least \$50,000 to members of Congress, 10.2 percent (38) have given at least two-fifths of their contributions to each party. Of the nearly 1,000 lobbyists who have contributed at least \$20,000 to members of Congress since 1998, more than 13 percent (132) have given at least two-fifths of their contributions to each party. [See Figure 11]

Figure 10: Lobbyists Who Contributed the Most to Members of Congress

Rank	Lobbyist	Total Contributed	Percent to Republicans	Percent to Democrats
1	H. Stewart Van Scoyoc	\$339,132	74.3	25.7
2	Daniel Mattoon	\$302,059	95.9	4.1
3	Michael Berman	\$297,961	0.0	100.0
4	Denny and Sandra Burgess Miller	\$293,203	48.1	51.9
5	Kenneth and Kathleen Clark Kies	\$292,866	91.7	8.3
6	Ben Barnes	\$288,500	3.1	96.9
7	James Boland	\$279,832	95.7	4.3
8	James and Camille Bares Massie	\$266,183	52.6	47.4
9	Van Hipp Jr.	\$261,521	82.1	17.9
10	David Bockorny	\$257,927	100.0	0.0
11	Paul Magliocchetti	\$251,550	25.3	74.7
12	Gerald Cassidy	\$246,750	5.5	94.5
13	Frederick Graefe	\$228,742	16.8	83.2
14	G. Stewart Hall	\$225,460	98.2	1.8
15	Peter Madigan	\$225,200	99.3	0.7
16	Bruce Gates	\$225,061	100.0	0.0
17	Gary and Susan Auther Andres	\$222,547	100.0	0.0
18	Joel Jankowsky	\$221,970	0.0	100.0
19	Timothy Rupli	\$215,771	60.7	39.3
20	James Smith	\$214,020	92.1	7.9
21	Henry Gandy	\$203,062	100.0	0.0
22	William Lowery	\$200,839	99.5	0.5
23	Wayne Berman	\$194,700	100.0	0.0
24	Michael Herson	\$190,156	82.5	17.5
25	Daniel Meyer	\$188,733	100.0	0.0
26	Tom Loeffler	\$187,526	96.3	3.7
27	Steven Champin	\$185,400	1.6	98.4
28	Gail and Jeffrey Mackinnon	\$184,220	98.1	1.9
29	John O'Rourke	\$182,478	87.8	12.2
30	Jack Abramoff	\$180,503	100.0	0.0
31	Jack Valenti	\$178,250	44.5	55.5
32	Bob and Kate Moss	\$175,669	5.0	95.0
33	Bill Paxon and Susan Molinari	\$173,707	100.0	0.0
34	Jeffrey Walter	\$172,928	100.0	0.0
35	Lisa and Wright Andrews	\$171,506	37.8	62.2
36	Richard and Letitia White	\$171,499	83.2	16.8
37	Vic and Judy Fazio	\$170,562	0.6	99.4
38	Mark Magliocchetti	\$168,250	26.7	73.3
39	Kevin Kelly	\$165,346	43.9	56.1
40	John Raffaeli	\$165,243	22.4	77.6
41	Robert Thompson	\$164,455	80.8	19.2
42	Ronald and Susan Platt	\$161,587	6.3	93.7
43	Richard Ladd	\$161,000	79.3	20.7
44	E Del Smith	\$160,699	71.2	28.8
45	Richard and Deborah Hohit	\$159,325	96.9	3.1
46	Thomas Petrizzo	\$158,646	97.8	2.2
47	Roy Pfautch	\$157,700	99.7	0.3
48	Robert Hurt	\$156,600	85.8	14.2
49	John Green	\$155,750	96.1	3.9
50	Thomas Davis	\$153,211	75.0	25.0
--	Total	\$10,355,805 \$207,116 (average)	66.4	33.6

Figure 11: Top Lobbyist Households Giving at Least 40 Percent to Each Party

Lobbyist	Pct. To Democrats	Pct. to Republicans	Total Given
Denny and Sandra Burgess Miller*	51.9	48.1	\$293,203
James and Camille Bares Massie*	47.4	52.6	\$266,183
Jack Valenti	55.5	44.5	\$178,250
Kevin Kelly	56.1	43.9	\$165,364
Eric Hanson	41.4	58.6	\$147,500
Cliff Madison	45.6	54.4	\$141,650
Linda and Richard Tarplin*	53.4	46.6	\$134,257
Robert Mills	42.2	57.8	\$131,693
Nicholas Cavarocchi	57.0	43.0	\$127,788
Marshall Brachman	47.5	52.5	\$126,950
Patrick Williams	57.8	42.2	\$122,750
David Turch	48.9	51.1	\$114,419
John Montgomery	41.7	58.3	\$113,526
Kaylene Green	55.1	44.9	\$104,168
Robert Glennon	58.7	41.3	\$103,219
Vincent Versage	53.9	46.1	\$97,666
D. Michael Murray	50.7	49.3	\$88,272
Elizabeth Robbins	59.5	40.5	\$87,554
Thomas Van Coverden	51.0	49.0	\$76,900
John Brimsek	47.7	52.3	\$76,550
Marilyn Berry Thompson	58.4	41.6	\$75,891
William Roberts	52.8	47.2	\$75,879
George Vradenburg	58.1	41.9	\$74,500
Robert Harris	42.0	58.0	\$74,031
William Millar	56.5	43.5	\$71,830
Jeanne Campbell	42.6	57.4	\$70,957
W Roger Gwinn	47.1	52.9	\$70,907
William Ferguson Jr.	50.5	49.5	\$64,700
Jan Schoonmaker	53.2	46.8	\$63,733
Emily and Rhod Shaw*	44.6	55.4	\$63,355
Alicia Smith	58.8	41.2	\$63,047
Robert Belair	42.9	57.1	\$62,156
Dale Dirks	53.0	47.0	\$61,200
John Rogers	48.1	51.9	\$60,380
Hector Alcalde	56.2	43.8	\$59,531
William McClure	45.1	54.9	\$58,299
Marty Alford	46.2	53.8	\$55,700
Joseph Raeder	47.3	52.7	\$53,104

* The methodology employed in this study calculates contributions by household, not by individual. Some couples may have split their contributions along party lines. This appeared to be the case for the Tarplins but not for the Millers, Massies or Shaws.

Trade Association Chiefs Are Typically Not Big Givers

In February 2006, the *National Journal* identified 48 heads of trade associations who earned more than a million dollars in salary and other benefits for the most recently completed year for which data was available. Of these, 22 have registered as lobbyists with the secretary of the Senate.⁴

While the majority of the lobbyists – 13 out of 22 – were among the 6.1 percent of registered lobbyists who have given \$10,000 or more to members of Congress since 1998, the trade association officers were not, on the whole, among the most generous donors. Only two rank among the top 300 lobbyist-contributors to Congress, and one of them is retired. [See Figure 12]

Figure 12: Contributions By Trade Association Leaders Who Are Lobbyists

Trade Association Lobbyist	Trade Association	Compensation (inc. Benefits)	Contributions to Members	Rank Among Lobbyist Contributors to Congress
Jack Valenti*	Motion Picture Association of America	\$11,081,112	\$178,250	31
Mitch Bainwol	Recording Industry Assoc. of America	\$1,345,984	\$62,341	297
Red Cavaney	American Petroleum Institute	\$1,358,219	\$50,750	365
Alan F. Holmer*	PhRMA	\$1,007,759	\$47,350	405
Karen Ignagni	America's Health Insurance Plans	\$1,236,422	\$20,500	911 (tie)
Craig Fuller*	National Assoc. of Chain Drug Stores	\$3,125,567	\$18,505	997
James May	Air Transport Association of America	\$1,960,629	\$18,500	998 (tie)
Jack N. Gerard*	National Mining Association	\$1,077,710	\$17,106	1,074
Thomas Donohue	Chamber of Commerce of the U.S.A.	\$6,784,945	\$14,750	1,204 (tie)
Carl Feldbaum*	Biotechnology Industry Organization	\$1,296,716	\$12,550	1,366 (tie)
Pamela G. Bailey*	Advanced Medical Technology Assoc.	\$1,134,394	\$12,500	1,369 (tie)
David N. Parker	American Gas Association	\$1,278,752	\$10,750	1,499 (tie)
Marc E. Lackritz	Securities Industry Association	\$1,093,496	\$10,600	1,519 (tie)
John J. Castellani	Business Roundtable	\$1,113,016	\$8,000	1,792 (tie)
Frank Fahrenkopf Jr.	American Gaming Association	\$1,256,652	\$6,250	2,072 (tie)
Edward O. Fritts*	National Association of Broadcasters	\$1,200,238	\$4,500	2,487 (tie)
Edward R. Hamberger	Association of American Railroads	\$1,064,529	\$2,800	3,198 (tie)
Frank A. Keating	American Council of Life Insurers	\$1,218,941	\$2,000	3,631 (tie)
Thomas R. Kuhn	Edison Electric Institute	\$1,331,584	\$1,250	4,371 (tie)
Robert Sachs*	Nat'l Cable & Telecom Association	\$1,653,473	\$1,000	4,628 (tie)
Steve Largent	CTIA – the Wireless Association	\$1,158,883	\$1,000	4,628 (tie)
Walter McCormick	United States Telecom Association	\$1,875,504	\$500	5,560 (tie)

* No longer in position

Contributions by Lobbyists Subsequently Convicted of Felonies

The past two years have been witness to a steady stream of influence peddling investigations. At least four registered lobbyists have been convicted of felonies: former powerhouse lobbyist Jack Abramoff; Tony Rudy, former deputy chief of staff to Rep. Tom DeLay (R-Texas); Michael Scanlon, former spokesman for DeLay; and Neil Volz, former chief of staff to Rep. Bob Ney (R-Ohio).⁵ The amounts they have contributed to members of Congress have varied widely. [See Figure 13]

Figure 13: Contributions of Lobbyist-Felons

Member of Congress	Rank Among Lobbyist-Contributors to Congress	Amount
Jack Abramoff	30	\$180,503
Tony Rudy	251	\$69,740
Neil Volz	899	\$20,785
Michael Scanlon	2,120	\$6,000

Some Former Members Give Significantly to Current Members

Many members of Congress become lobbyists after leaving office. A Public Citizen study released in July 2005 found that more than 43 percent of members leaving Congress since 1998 subsequently became lobbyists.⁶

Of these, eleven have contributed at least \$100,000 to their former colleagues. This calculation includes the combined contributions of former representatives Susan Molinari and Bill Paxon (both R-N.Y.), who are married. [See Figure 14]

Figure 14: Former Members of Congress-Turned-Lobbyists

Member of Congress	Rank Among Lobbyist-Contributors to Congress	Amount
Rep. William Lowery (R-Calif.)	22	\$200,839
Rep. Vic Fazio (D-Calif.)	37	\$170,562
Reps. Susan Molinari and Bill Paxon (R-N.Y.)	33	\$173,707
Rep. Thomas Downey (D-N.Y.)	53	\$149,540
Sen. Dennis DeConcini (R-Ariz.)	75	\$128,380
Rep. Tom Loeffler (R-Texas)	26	\$187,526
Rep. Charles Wilson (D-Texas)	65	\$137,300
Rep. Bill Brewster (D-Okla.)	97	\$115,236
Sen. Robert Dole (R-Kansas)	115	\$104,600
Rep. Raymond Kogovsek (D-Colo.)	110	\$108,850
Rep. Vin Weber (R-Minn.)	127	\$102,100
Total	—	\$1,578,640

Many Big Donor Lobbyists Are Big Bundlers

Of the 132 lobbyists who have given at least \$100,000 to members of Congress since 1998, nine were designated as "Rangers" or "Pioneers" by George W. Bush in his 2004 presidential campaign, signifying that they raised at least \$100,000 for Bush by soliciting contributions from others. Three of these raised at least \$100,000 for Bush in 2000, as well. These lobbyists have given \$1.7 million to members of Congress since 1988. [See Figure 15]

Sen. John Kerry (D-Mass.) mimicked Bush's technique of bestowing an honorary title upon his fundraisers in his 2004 presidential campaign. Of lobbyists who have personally contributed at least \$100,000 to members of Congress since 1998, three earned "Vice Chair" status by raising at least \$100,000 for Kerry's presidential bid. [See Figure 16]

Figure 15: Lobbyist Rangers and Pioneers Who Gave at Least \$100,000 to Members of Congress Since 1998

Ranger/Pioneer*	Ranger/ Pioneer (Year)	Rank Among Lobbyist- Contributors to Congress	Total Contributed to Members of Congress
Kenneth Kies**	Pioneer (2004)	5	\$292,866
Wayne and Lea Berman	Pioneer (2000) Ranger (2004)	23	\$194,700
Tom and Nancy Loeffler	Pioneer (2000) Ranger (2004)	26	\$187,526
Jack A. Abramoff	Pioneer (2004)	30	\$180,503
Bill Paxon**	Pioneer (2000) Pioneer (2004)	33	\$173,707
Richard F. Hohlt	Ranger (2004)	45	\$159,325
Lanny Griffith	Ranger (2004)	74	\$130,346
Charlie and Judy Black	Pioneer (2004)	79	\$125,900
Shawn H. Smeallie	Pioneer (2004)	120	\$103,374
Total		—	\$1,548,247

* Rangers raised at least \$200,000 for Bush in 2004. Pioneers raised at least \$100,000 for Bush in 2000 or 2004.

** The contributions of Paxon and Kies to members of Congress include the contributions of their lobbyist spouses.

Figure 16: \$100,000+ Lobbyist-Contributors Who Raised at Least \$100,000 for Kerry

Kerry Bundler	Rank Among Lobbyist- Contributors to Congress	Total Contributed to Members of Congress
Ben Barnes	6	\$288,500
James Johnson	95	\$115,809
John Merrigan	125	\$102,167
Total	—	\$506,476

Lobbyists' Contributions Are the Tip of the Iceberg

The campaign contributions lobbyists make from their own checkbooks are just a fraction of the contributions they make to members of Congress. Lobbyists play a far more significant role in funding lawmakers by coordinating fundraisers and arranging for contributions from others, often their clients.

No comprehensive data exists on the sum of money lobbyists have been able to funnel to lawmakers. But anecdotal information suggests that the amount may equal 10 times their personal contributions – and, perhaps, more.

- Former Freddie Mac lobbyist Mitchell Delk contributed \$41,950 to members of Congress from 1998 through 2006, ranking him No. 454 among lobbyist-contributors. But a news report on Freddie Mac's agreement in April 2006 to pay the FEC a record \$3.8 million fine to settle charges that the company made illegal campaign contributions cited a document in which Delk claimed he had held more than 75 events for members of the House Financial Services Committee from 2000-2003. Delk claimed those events had raised nearly \$3 million.⁷
- Disgraced lobbyist Jack Abramoff contributed \$180,503 to members of Congress from 1998 through 2006. That's a healthy sum that places him 30th among lobbyist-contributors. But it's hardly a measure of his true influence. Abramoff's personal contributions represent only 7 percent of the \$2.6 million that he and his clients funneled to members of Congress and congressional candidates between 1997 and the end of 2004, according to an analysis by CRP. (Note: the CRP calculation covers a slightly different time period than that covered in this study and also includes contributions to candidates who are not in Congress, which this study does not.)
- In 1996, the lobbyist couple Denny and Sandra Miller hosted a pair of fundraisers for Sen. Ted Stevens (R-Alaska). The total the Millers could have contributed under campaign finance law at the time was \$4,000. The fundraisers raked in \$160,000 for Stevens.⁸
- Bush and Kerry were only permitted to accept \$2,000 per person in the 2004 presidential campaign. Yet, 12 lobbyists who gave more than \$100,000 to members of Congress since 1998 were able to raise at least \$100,000 each for Bush or Kerry in 2004, and four were able to funnel at least \$200,000 into Bush's coffers – at least 100 times as much as they were permitted to contribute personally.

Some lawmakers are alert to the appearance of impropriety that lobbyists' fundraising efforts can present. In January 2006, as the Jack Abramoff scandal continued to expand, Rep. Ray LaHood (R-Ill.) sent a letter to 23 lobbyists alerting them that he would no longer avail himself of their fundraising services.⁹

"In the past, we have asked each of you to sponsor an event and commit to raise money on my behalf," LaHood wrote. "I believe this could be perceived as a special relationship, and I am confident all of us want to avoid this perception."¹⁰

LaHood's confidence was not entirely well placed. "I just want to wake up and have this nightmare be over," one lobbyist-recipient of the letter said, referring to the reform spirit that had briefly swept the capital.¹¹

Section II: Profiles of the Top Ten Lobbyist-Contributors

1. Stewart Van Scoyoc

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Van Scoyoc Associates	1998-2005
Capitol Decisions	2000-2005
Van Scoyoc Kelly	2002-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$252,038	74.3
Democrats	\$87,094	24.7
Total	\$339,132	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Computer Sciences Corp.	\$3,000,000
Coalition Of EPSCoR States	\$2,120,000
Raytheon Systems Corp.	\$1,820,000
University Of Alabama System	\$1,460,000
Federal Home Loan Bank, San Fran.	\$1,420,000
Aluminum Co Of America (ALCOA)	\$1,260,000
Anheuser-Busch Cos.	\$1,400,000
Federal Home Loan Mortgage Corp.	\$1,360,000
Wackenhut Services	\$1,260,000
University Of New Orleans Fndtn.	\$1,220,000

*Total receipts include only amounts paid by client in semi-annual periods in which Van Scoyoc represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Sen. Richard Shelby (R-Ala.)	\$28,000
Sen. Conrad Burns (R-Mont.)	\$22,000
Rep. Pete Visclosky (D-Ind.)	\$20,000
Sen. Trent Lott (R-Miss.)	\$12,750
Rep. Tom DeLay (R-Texas)	\$12,500
Sen. Bill Frist (R-Tenn.)	\$11,000
Sen. Thad Cochran (R-Miss.)	\$8,500
Rep. C. W. Bill Young (R-Fla.)	\$7,907
Rep. Michael Oxley (R-Ohio)	\$7,000
Sen. Byron Dorgan (D-N.D.)	\$6,950

In 1990, H. Stewart (Stu) Van Scoyoc founded Van Scoyoc Associates, along with two other people. The firm now consists of 90 professionals and represents more than 300 clients, according to claims on its Web site.¹² Van Scoyoc Associates posted the fourth-highest revenue among federally registered lobbying firms in the first six months of 2005, the most recent six-month period for which complete data is available.¹³

Van Scoyoc started the firm with a focus on appropriations and taxation, and the firm has continued to specialize in spending matters, particularly in procuring earmarks for clients.¹⁴ Six of the top 10 congressional recipients of Van Scoyoc's contributions since 1998 currently serve on House or Senate appropriations committees, including Senate Appropriations Committee Chair Thad Cochran (R-Miss.). Van Scoyoc Associates counts more than 50 universities among its clients.

Van Scoyoc Associates is so deeply embedded in the Washington fundraising infrastructure that it actually provides some of the infrastructure. The firm leases out a special room in its offices, with a view of the Capitol dome, for fundraising events.¹⁵

Sen. Richard Shelby (R-Ala.), the top recipient of Van Scoyoc's contributions, is a member of the Appropriations Committee and in 2005 took over as chairman of its Commerce, Justice and Science Appropriations Subcommittee, a traditional source of earmarks for universities. The University of Alabama System has paid Van Scoyoc Associates nearly \$1.5 million since 1998.¹⁶ The system has received nearly \$150 million in earmarks since 1999, including at least \$42.5 million toward a biomedical research center, which has been named after Shelby.¹⁷

The university system's success in receiving appropriations in fiscal year 2006 apparently rested on Shelby's chairmanship of the subcommittee. The university's effort to procure funding in the appropriations bill for labor, health and human services, and education programs fell through when earmarks, under increased public scrutiny, were barred from the legislation.¹⁸ But the ban on earmarks evidently didn't apply to every bill produced by the Appropriations Committee. The University of Alabama System was able to get a \$50 million earmark inserted into the bill handled by Shelby's subcommittee, including \$20 million for the biomedical research center.¹⁹

Van Scoyoc's handiwork has shown up elsewhere in Washington's laws and appropriations:

- In 2003, the Alabama resort city of Orange Beach hired Van Scoyoc's firm to lobby for federal funds. Ray Cole, a Van Scoyoc Associates lobbyist and former top aide to Shelby, handled the account. Orange Beach is paying the firm \$60,000 a year. City officials credit Cole with obtaining \$3.4 million in earmarks.²⁰ Cole, who has contributed \$80,500 to members of Congress since 1998, was named a "Ranger" by President Bush's 2004 reelection campaign, signifying that he raised at least \$200,000 for Bush.²¹
- Lobbyists for the city of San Antonio were surprised to learn in March 2006 that the House Science, State, Justice, and Commerce Appropriations Subcommittee had been asked for earmarks totaling \$1.3 million to buy surveillance and mobile license plate detection equipment for the city police department. The request, it turned out, was made by Van Scoyoc Associates' lobbyists Brian Prende, Andre Hollis and Stewart Van Scoyoc, who lobby for the manufacturer of the equipment, Remington ELSAG Law Enforcement Systems. The "Funding Request Form" said the "San Antonio Police Department" was the "actual recipient name." The funding request did not disclose that Remington was a client of Van Scoyoc Associates.²²
- In June 2003, Reveal Imaging Technologies Inc. – a small Massachusetts start-up specializing in explosives detection equipment – hired Van Scoyoc Associates. Three months later, the firm scored a \$2.4 million Transportation Security Administration grant to study how to develop smaller explosives-detection machines for use in airports. In October 2003, Van Scoyoc Associates hosted a fundraiser for Rep. Harold Rogers (R-Ky.), chair of the Appropriations Homeland Security Subcommittee. Eight days later, Rogers' leadership PAC reported contributions totaling \$14,000 from five Reveal executives, five Reveal directors and a lobbyist. (The lobbyist was not Van Scoyoc, who

had contributed \$2,000 to Rogers in July of that year.) Reveal “executives and associates” eventually contributed \$122,111 to Rogers.²³ By March 2006, Reveal had received \$28.1 million in orders from the TSA.²⁴

- The Lincoln Group hired Van Scoyoc Associates in the summer of 2005. That same summer, Lincoln was one of three companies hired “at up to \$100 million over five years, to help special operations forces develop media programs around the world,” according to the *Washington Post*. The firm subsequently won a \$20 million contract to advertise in Iraq’s Anbar province in the run-up to national elections there. The Lincoln Group was the subject of headlines in November 2005, when the *Los Angeles Times* reported that it had helped translate news stories written by the U.S. military and secretly paid Iraqi papers to publish them.²⁵

Van Scoyoc Associates’ role in winning appropriations for the Lincoln Group is not clear. The Lincoln Group has said it used lobbying groups to communicate its story in Congress after winning a share of the large special operations contract. But the lobbying registration form filed by Van Scoyoc Associates said the firm’s role would be to lobby on “appropriations regarding information operations.”²⁶

2. Dan Mattoon

Organization(s) for Which Individual Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
BellSouth Corp.	1998-2000
PodestaMattoon	2001-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$289,559	95.9
Democrats	\$12,500	4.1
Total	\$302,059	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Science Coalition	\$2,600,000
Altria Group Inc.	\$1,740,000
Qualcomm Inc.	\$1,600,000
Cingular Wireless	\$1,480,000
Lockheed Martin Corp.	\$1,380,000
United To Secure America	\$1,340,000
Children's National Medical Center	\$1,320,000
PhRMA	\$1,170,000
Amgen	\$1,020,000
Investment Co. Institute	\$1,020,000

*Total receipts include only amounts paid by client in semi-annual periods in which Mattoon represented client. Clients listed do not include BellSouth, for which Mattoon worked as an in-house lobbyist from 1998-2000.

Top Congressional Recipients of Lobbyist's Contributions Since 1998

Member of Congress	Amount
Rep. Dennis Hastert (R-Ill.)	\$38,250
Rep. Tom Reynolds (R-N.Y.)	\$29,250
Rep. Tom DeLay (R-Texas)	\$20,500
Rep. Roy Blunt (R-Mo.)	\$14,000
Rep. John Doolittle (R-Calif.)	\$11,500
Rep. Jerry Weller (R-Ill.)	\$10,500
Rep. Tom Davis (R-N.D.)	\$10,212
Rep. Joe Barton (R-Texas)	\$8,250
Rep. Eric Cantor (R-Va.)*	\$7,500
Rep. Deborah Pryce (R-Ohio)	\$7,250
Rep. Billy Tauzin (R-La.)**	\$7,250

* Congressional service began in 2001

** Congressional service ended in 2004

Dan Mattoon is a principal in the 18-year-old firm of PodestaMattoon, which describes itself as a "bipartisan government relations and public affairs" firm.²⁷ Mattoon's online biography says he has worked with Republican representatives for over 30 years. He is a close friend of House Speaker Dennis J. Hastert (R-Ill.).²⁸ At Hastert's request, Mattoon left BellSouth, where he had been vice president of congressional affairs for 15 years, to help run the National Republican Congressional Committee (NRCC) and help the GOP retain control of the House in 2000.²⁹ Mattoon's biography says, "for more than 30 years, he has provided political and strategic legislative counsel to House Republican members, and is a trusted advisor to many of the Washington political elite, including Speaker Hastert, House Majority Whip Blunt, House Republican Conference Chairwoman Pryce, and NRCC Chairman Reynolds."³⁰ Each of the four is among the top 10 congressional recipients of campaign contributions from Mattoon. Mattoon also hired Joshua Hastert, the speaker's son, as a lobbyist.³¹ Mattoon's wife, Jane, once served as treasurer of Hastert's leadership Political Action Committee.³²

Mattoon was involved in a Republican effort to wring more money out of lobbyists for Republican candidates. He was one of a small group of lobbyists who met with then-House

Majority Leader Tom DeLay (R-Texas) at a dinner hosted by now-disgraced lobbyist Jack Abramoff at Abramoff's Signatures restaurant in January 2004 to discuss the issue. "There has been a concern that not enough folks who are out there making money based on their relation to the Hill are giving enough of their own money to the Republican Party," a GOP aide said of the initiative to gin up more lobbyist contributions to Republican lawmakers.³³

While the deputy director of the National Republican Congressional Committee (NRCC) in 1999, Mattoon seems to have been involved in a decision to transfer \$500,000 from the NRCC to the U.S. Family Network, a 501(c)(4) group that operated in the same Capitol Hill townhouse as the political action committees of House Majority Leader Tom DeLay (R-Texas) and Majority Whip Roy Blunt (R-Mo.).³⁴

Mattoon said the transfer was made because of the ties former DeLay Chief of Staff Ed Buckham had to the group, and with the expectation that the money would be used to aid Republicans in the 2000 elections. "The Family Network is a group that based on our view of Ed Buckham's strengths in the family community and his political strengths will have an equally important impact in the elections, favorably for Republicans," Mattoon said.³⁵

In 2004, the FEC fined the NRCC \$280,000 for its transfer of the \$500,000 and the subsequent use of the money to finance ads attacking vulnerable Democrats.³⁶

After DeLay announced plans to resign from Congress, Mattoon continued to praise him, calling him "one of the founding fathers of the Republican majority in the House," and saying that, "Tom has a strong legacy that he should be proud of."³⁷

PodestaMattoon's top-paying client since 1998 has been The Science Coalition, which represents 60 universities. The Coalition has paid \$2.6 million for the firm's services since 2001. The Coalition periodically honors members of Congress, typically those serving on appropriations committees, such as Rep. Jerry Lewis (R-Calif.) and former Rep. Randy "Duke" Cunningham, upon whom the Coalition bestowed its "Champion of Science" award in 2004.³⁸ Cunningham has subsequently pleaded guilty to accepting \$2.4 million in bribes from contractors and is serving an eight-year prison sentence.³⁹

The University of California system, a member of the Coalition, received more than \$3.7 million in earmarks in 2005.⁴⁰

3. Michael Berman

Organization(s) for Which Individual Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Duberstein Group	1998-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$0	0
Democrats	\$297,961	100
Total	\$297,961	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Americas Health Insurance Plans	\$1,900,000
Business Roundtable	\$1,520,000
United Airlines	\$1,280,000
Time Warner	\$1,260,000
American Apparel & Footwear Assn.	\$1,220,000
Direct Marketing Assn.	\$920,000
American Gaming Assn.	\$860,000
General Motors	\$856,000
Goldman Sachs & Co.	\$840,000
American Council Of Life Insurance	\$800,000

*Total receipts include only amounts paid by client in semi-annual periods in which Berman represented client.

Top Congressional Recipients of Lobbyist's Contributions Since 1998

Member of Congress	Amount
Sen. Tom Daschle (D-S.D.)*	\$27,000
Sen. Hillary Clinton (D-N.Y.)**	\$18,000
Rep. Steny Hoyer (D-Md.)	\$17,499
Rep. Nancy Pelosi (D-Calif.)	\$17,000
Sen. Harry Reid (D-Nev.)	\$14,500
Rep. Rosa DeLauro (D-Conn.)	\$14,500
Rep. Richard Gephardt (D-Mo.)*	\$13,500
Sen. Patrick Leahy (D-Vt.)	\$11,250
Rep. Ellen Tauscher (D-Calif.)	\$9,500
Rep. Henry Waxman (D-Calif.)	\$8,000
Sen. Joe Lieberman (D-Conn.)	\$8,000
Sen. Maria Cantwell (D-Wash.)**	\$8,000

*Congressional service ended in 2004

** Congressional service began in 2001

Michael Berman embodies what it means to be a Washington insider. He has worked on every Democratic presidential campaign since 1964 and served as Vice President Walter Mondale's counsel and deputy chief of staff.⁴¹ He has acted as scheduler for six Democratic conventions, and by dint of being on the "special access list" during the Clinton years, was given virtually unrestricted access to the White House.⁴²

Berman was a regular attendee of K Street breakfasts hosted by former Sen. Tom Daschle (D-S.D.) in the late 1980s. The regular attendees of the breakfasts eventually came to comprise the advisory board of Daschle's political action committee, DASHPAC.⁴³ Berman also served as one of Hillary Clinton's closest advisors in the late 1990s, while Clinton contemplated her options after the end of President Clinton's term.⁴⁴ Daschle and Clinton rank No. 1 and No. 2 on the list of congressional recipients of Berman's contributions since 1998, even though neither has been in office for the entire time period studied. (Daschle was defeated in 2004; Clinton was not

elected until 2000, and this study does not capture contributions she received in her inaugural run because she was not yet a member of Congress.)

4. Denny and Sandra Miller

Organization(s) for Which Individual Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Denny Miller Associates (Denny Miller)	1998-2006
Denny Miller Associates (Sandra Miller)	1998- 2000

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions to Lobbyist Has Made to Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$141,010	48.1
Democrats	\$152,193	51.9
Total	\$293,203	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Boeing Co. (Denny and Sandra Miller)	\$1,040,000
Todd Pacific Shipyards Corp. (Denny and Sandra Miller)	\$620,000
General Dynamics (Denny and Sandra Miller)	\$600,000
Northrop Grumman Corp. (Denny Miller)	\$560,000
Alaska Air Group (Denny Miller)	\$560,000
Sound Transit (Denny and Sandra Miller)	\$520,000
Olin Corporation (Denny and Sandra Miller)	\$500,000
Port Of Tacoma (Denny Miller)	\$440,000
Precision Aerospace Corp. (Denny Miller)	\$440,000
Ramgen Power Systems (Denny Miller)	\$400,000

*Total receipts include only amounts paid by client in semi-annual periods in which Denny or Sandra Miller represented client.

Top Congressional Recipients of Lobbyist's Contributions Since 1998

Member of Congress	Amount
Sen. Conrad Burns (R-Mont.)	\$32,500
Sen. Ted Stevens (R-Alaska.)	\$25,000
Sen. Patty Murray (D-Wash.)	\$20,000
Rep. Adam Smith (D-Wash.)	\$17,500
Rep. Ike Skelton (D-Mo.)	\$15,800
Rep. Jerry Lewis (R-Calif.)	\$12,500
Rep. Norm Dicks (D-Wash.)	\$11,850
Sen. Tom Harkin (D-Iowa)	\$10,500
Rep. C.W. Bill Young (R-Fla.)	\$10,000
Sen. Maria Cantwell (D-Wash.)*	\$9,635

*Congressional service began in 2001

Miller, a former chief of staff to Sen. Henry "Scoop" Jackson (D-Wash.), is a bipartisan contributor who has tapped bipartisan connections on behalf of his clients. His firm, Denny Miller Associates, advertises itself as a "government relations consulting firm" that has been delivering "legislative victories and solutions to our clients for over twenty years."⁴⁵

One of the firm's near victories centered on the \$30 billion proposal for the military to lease air refueling tankers from the Boeing Co., which has paid Denny Miller Associates more than \$1 million in fees since 1998, more than any other Miller client.⁴⁶ Miller and an in-house lobbyist for Boeing helped negotiate the lease language, according to a *New York Times* article published in late 2001, before the bloom came off the Boeing deal.⁴⁷

The tanker proposal eventually crashed amid revelations that 1) it would cost the government more to lease the planes than to purchase them outright, 2) the military didn't truly need the

planes and 3) the procedure used in negotiating the deal was rife with violations. The near deal has achieved ignominy as one of the worst procurement abuses in recent decades and has resulted in prison sentences for a Boeing executive and a Pentagon official.⁴⁸

To garner lawmakers' support for the deal, Boeing relied on the congressional delegations from Washington state and Missouri, the two states in which the planes would be assembled, and from Sen. Ted Stevens (R-Alaska), who was the ranking Republican on the Appropriations Committee. When skepticism arose among certain members in the House, Boeing CEO Phil Condit accompanied Sen. Patty Murray (D-Wash.) on visits to Rep. Jerry Lewis (R-Calif.) and to Speaker of the House Dennis Hastert (R-Ill.).⁴⁹

This select group of lawmakers accounts for three of the top six congressional recipients of the Millers' campaign contributions since 1998. Stevens is No. 2, at \$25,000; Murray is No. 3, at \$20,000; and Lewis is No. 6 at \$12,500.

Miller appears to have a particularly close relationship with Stevens. He and wife Sandra Burgess Miller, who has also served as a lobbyist for Denny Miller Associates, hosted a pair of fundraisers in 1996 for Stevens that raised a total of \$160,000 in less than four hours. Among the 200 attendees were "various Boeing executives who each contributed \$1,000 to the Stevens campaign."⁵⁰

In 2004, Miller landed on the 14-person steering committee of the newly minted Ted Stevens Foundation. He was joined on the committee by 13 other registered lobbyists. The foundation's inaugural fundraiser vacuumed up \$2 million.⁵¹

Seven of the 10 top recipients of Miller's congressional contributions since 1998 currently sit on House or Senate appropriations committees: Sen. Conrad Burns (R-Mont.), Stevens, Murray, Lewis, Rep. Norm Dicks (D-Wash.), Sen. Tom Harkin (D-Iowa) and Rep. C.W. Bill Young (R-Fla.).

5. Kenneth and Kathleen Kies

Organization(s) for Which Individual Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Clark Consulting Federal Policy Group (Kenneth Kies)	2002-2005
PriceWaterhouseCoopers (Kenneth Kies)	1998-2002
Teco Energy (Kenneth Kies)	2000
Collier Shannon Scott (Kathleen Kies)	1998-2003

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$268,616	91.7
Democrats	\$24,250	8.3
Total	\$292,866	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
General Electric Co. (Kenneth Kies)	\$5,380,000
PriceWaterhouseCoopers (Kenneth Kies)	\$4,860,000
FSC 2000 Coalition (Kenneth Kies)	\$2,840,000
Council For Energy Independence (Kenneth Kies)	\$2,380,000
PWC Leasing Coalition (Kenneth Kies)	\$2,360,000
Bank Of America (Kenneth Kies)	\$1,980,000
Contract Manufacturing Coalition (Kenneth Kies)	\$1,960,000
Starwood Hotel & Resorts Worldwide (Kenneth Kies)	\$1,700,000
Goldman Sachs (Kenneth Kies)	\$1,600,000
Structured Finance Coalition (Kenneth Kies)	\$1,500,000

*Total receipts include only amounts paid by client in semi-annual periods in which Kenneth or Kathleen Kies represented client.

Top Congressional Recipients of Lobbyist's Contributions Since 1998

Member of Congress	Amount
Rep. Jim McCrery (R-La.)	\$40,500
Rep. Bill Thomas (R-Calif.)	\$25,999
Sen. Don Nickles (R-Okla.)*	\$24,876
Rep. Dennis Hastert (R-Ill.)	\$22,500
Sen. Judd Gregg (R-N.H.)	\$10,565
Rep. Clay Shaw (R-Fla.)	\$10,000
Rep. George Nethercutt (R-Wash.)	\$8,500
Sen. Jim Bunning (R-Ky.)	\$8,500
Rep. Mark Foley (R-Fla.)	\$8,000
Sen. Kent Conrad (D-N.D.)	\$8,000

*Congressional service ended in 2004

Kenneth Kies, who served as the chief of staff of the Congressional Joint Committee on Taxation from January 1995 until January 1998, has been widely celebrated for his effectiveness. In 2000, the lobbying trade magazine *Influence* named him "Washington's best tax lobbyist," and the now-defunct magazine *Regardies* included him in its list of the "100 most powerful people" in private sector Washington. In 1998, the Tax Executives Institute gave Kies its Distinguished Service Award, and in 1997 Kies was named one of the three "most dangerous" bureaucrats in the country by *Fortune* and one of the most powerful staffers on Capitol Hill by *Roll Call*.⁵²

Kies was one of six people invited to sit at the table during the five-day, final negotiations on the Taxpayer Relief Act of 1997. The other five participants were Speaker of the House Newt Gingrich (R-Ga.), Senate Majority Leader Trent Lott (R-Miss.), Treasury Secretary Robert Rubin, White House Deputy Chief of Staff Erskine Bowles, and White House legislative liaison John Hilley.⁵³ Kies was also one of four private sector co-moderators at President Clinton's White House Conference on Social Security, a faculty member at the Committee on Ways and Means 1993 retreat on tax policy, and co-chaired the Committee on Ways and Means 1996 retreat on tax reform.⁵⁴

The Web site of Clark Consulting Group includes more than 25 publications that Kies has authored. The Web site also notes that Kies has completed eight marathons, including the Boston Marathon.⁵⁵

In recent years, Kies has used his remarkable skill and motivation to lobby Congress and the IRS to retain a tax credit that costs the Treasury an estimated \$1 billion to \$4 billion a year and appears to serve no public policy purpose other than enriching the businesses that exploit it.⁵⁶ It's called the synfuel tax credit, and it stems from a 1980 law created by Congress as an incentive to use coal and other fossil fuels to create synthetic natural gas and oil as alternatives to foreign sources of energy.⁵⁷ But tax sleuths eventually figured out that the law's loose definition of synthetic fuels could be exploited to claim massive tax credits for producing products that barely differed from conventional fuels.⁵⁸

By 2006, opportunistic companies – including the hotel chain Marriott and retail electronics chain Rex Stores Corp. – had created 55 plants that were fashioning synfuel by such means as spraying regular coal with diesel fuel, pine-tar resin, limestone or various other substances. Industry critics call the practice “spray and pray,” the prayer being that the IRS doesn't conduct an audit that results in an unfavorable ruling. *Time*, which has published a pair of exposés on synfuel, estimated that the tax credit cost the Treasury \$9 billion from 2003 to 2005.⁵⁹

In 2005, a bill was introduced in the House that would have virtually eliminated the tax credit, but it never made it out of the Ways and Means Committee. The chief lobbying entity on this issue has been the Council for Energy Independence (CEI), which has paid Clark Consulting and another lobbying firm for which Kies previously worked nearly \$2.4 million since 2002. Kies serves as the director of the CEI.⁶⁰ Meanwhile, CEI member General Electric Co. has paid Kies' firms nearly \$5.4 million in lobbying fees since 1998.⁶¹

The rise in fuel prices in 2005 threatened to undermine the synfuel boondoggle. The law creating the tax credit called for it to be phased out as the price of crude oil rose, on the theory that the subsidy would not be necessary if conventional fuels lost their cost advantage.⁶²

Congress tried to come to the rescue. The Tax Relief Act of 2005, which provided aid to Hurricane Katrina victims, included a clause that pegged the synfuel tax credit to oil prices as they stood in 2004, guaranteeing that synfuel producers would be able to claim the maximum credit, regardless of how high the price of crude oil rose.⁶³ A Senate Finance Committee staffer said in an e-mail to a reporter that the clause had been authored by Sen. Rick Santorum (R-Pa.) and was accepted by Finance Committee Chairman Chuck Grassley without a committee vote

because it was not controversial. Santorum's political committees have received more than \$200,000 since 2000 from companies involved in synfuel production.⁶⁴

The clause sailed through the Senate with no discussion. *Time* speculated that most lawmakers never knew it was in the bill.⁶⁵ But, because similar language was not included in the House bill, its fate rested on the budget reconciliation process. The provision was pulled from a compromise reached in early May 2006, but a Senate aide said it could re-emerge in a "trailer" bill.⁶⁶

Synfuel has been on the ropes before. In July 2003, the IRS announced that it was investigating the legitimacy of synfuel tax credits – putting several years of certain companies' past profits in jeopardy – and was putting a moratorium on synfuel "private letter rulings," which serve as endorsements of companies' practices and make their synfuel operations marketable for sale.⁶⁷

The same month, House Ways and Means Select Measures Subcommittee Chairman Jim McCrery (R-La.) was one of eight Ways and Means Committee members who signed a letter to Treasury Secretary John Snow asking him to withdraw the announcement questioning the use of the synfuel tax credit and to resume issuing "private letter rulings."⁶⁸ In September 2003, McCrery met with the IRS acting chief counsel and the Treasury Department's top tax official, prevailing on them to drop their threatened crackdown on the tax credit. In October of that year, the IRS called off the investigation and gave companies a green light to claim the tax break. An IRS lawyer who has worked on the synfuel issue said the IRS decision "smells to high heaven," and complained that the IRS had given companies "the keys to the Treasury."⁶⁹

Since 1998, Kies' contributions to McCrery have totaled \$40,500, the most he has given to any member of Congress.

Kies has acknowledged the expectation lobbyists face to funnel money to lawmakers in exchange for "credit." Such credit was easier to come by before the ban on soft money contributions came into effect in 2003. "Lobbyists who never actually pulled out their own checkbooks could claim credit for their clients' soft money," he said.⁷⁰

Kies was named a "Pioneer" by President Bush's 2004 reelection campaign, signifying that he raised more than \$100,000 for Bush.⁷¹

6. Ben Barnes

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Ben Barnes	1998-2005
Huntsman Corp.	2003-2004

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$9,000	3.1
Democrats	\$279,500	96.9
Total	\$288,500	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Longhorn Pipeline	\$1,887,000
Laredo National Bank	\$1,815,000
Bridgestone-Firestone	\$1,600,000
Freddie Mac	\$1,350,000
American Airlines	\$1,200,000
Stanford Financial	\$650,000
Eagle Global Logistics	\$550,000
Reaud, Wayne	\$503,400
Lakin Law Firm	\$360,000
SBC Telecommunications	\$240,000

*Total receipts include only amounts paid by client in semi-annual periods in which Barnes represented client. Lobbying expenditures of Huntsman Corp., for which Barnes has served as an in-house lobbyist, are not included

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Sen. Tom Daschle (D-S.D.)*	\$33,000
Sen. John Kerry (D-Mass.)	\$18,000
Sen. Hillary Clinton (D-N.Y.)**	\$13,100
Sen. Chris Dodd (D-Conn.)	\$13,000
Sen. Kent Conrad (D-N.D.)	\$12,000
Sen. Joseph Biden (D-Del.)	\$12,000
Sen. Harry Reid (D-Nev.)	\$10,500
Sen. Patrick Leahy (D-Vt.)	\$10,000
Sen. Mary Landrieu (D-La.)	\$9,000
Sen. Evan Bayh (D-Ind.)	\$9,000
Sen. Jeff Bingaman (D-N.M.)	\$9,000
Sen. Max Baucus (D-Mont.)	\$9,000

*Congressional service ended in 2004

** Congressional service began in 2001

Ben Barnes was making quite a name for himself in Texas politics, winning a seat in the Texas House at age 22 and proceeding to become the state's youngest House speaker and lieutenant governor. Even Lyndon Johnson foresaw the presidency in Barnes' future, but the Sharpstown stock fraud scandal, deemed Texas' Watergate, ended his political career at age 34 in 1972. State officials were accused of making a quick profit on bank-financed stock purchases in exchange for passage of legislation wanted by the owner of an insurance company and the Sharpstown State Bank.⁷² Barnes was not implicated in a crime, but a hearsay account that said he "takes only cash" was leaked, fatally wounding his 1972 bid for governor.⁷³ After a brief boom and bankruptcy in the real estate market, Barnes embarked on a lobbying career in the 1990s and went on to create an empire as president of the lobbying firm Entrecorp and of the Ben Barnes Group.⁷⁴ (Entrecorp has not listed Barnes as a lobbyist on its federal lobbying disclosures since 1998.)

Barnes soon re-entered the world of politics from this new angle and quickly became so influential that Sen. Tom Daschle (D-S.D.), who received \$33,000 from Barnes from 1998 to 2004, dubbed him an "ex-officio member" and "the fifty-first Democratic senator."⁷⁵ Besides giving \$18,000 to Kerry senatorial political committees since 1998, Barnes raised \$100,000 for Kerry's presidential campaign – and was rumored as a candidate for a cabinet post if Kerry won.⁷⁶

Barnes is well known for his fundraising prowess, and he isn't shy about admitting it. While organizing fundraisers in Texas, Barnes boasted "every Democratic senator who is running for reelection has been to Texas for a fundraiser. We've got one coming up for [Democratic South Dakota Senator] Tim Johnson."⁷⁷

Barnes' donation of \$3,000 to the legal fund of Sen. Harry Reid (D-Nev.) during the summer of 1999 violated Senate ethics rules. Contributions from lobbyists to the legal expense funds of members of Congress are forbidden. After the Center for Public Integrity brought the issue to light in August 2005, Reid's spokesperson claimed the senator was unaware of Barnes' lobbyist status. A colleague of Barnes who spoke on his behalf claimed that Barnes was unaware of the rule, saying that he made the contribution "out of pure friendship."⁷⁸ Barnes also has donated \$10,500 to Reid's political committees.

Barnes' name was back in the news in October 2005, during debate over Harriet Miers' Supreme Court nomination, due to Barnes' relationship with GTECH Corp., the main contractor of the Texas lottery. (From 1995 until 2000, Miers served as chairwoman of the Texas Lottery Commission.) A 1998 lawsuit by Lawrence Littwin, a Texas lottery executive director who had been fired in 1997, alleged that GTECH was allowed to retain its Texas lottery contract in exchange for Barnes' silence over his role in helping George W. Bush gain entry into the National Guard to avoid service in Vietnam. Barnes served as a GTECH lobbyist from 1991 until 1997. Barnes had initially said he could not recall helping Bush, but later testified that he recommended Bush for a pilot position in the Air National Guard at the request of a Bush family friend.⁷⁹

Barnes was well compensated for his Texas lottery lobbying work. Beyond his \$25,000 annual fee, the contract agreement awarded Barnes and his partner 3.5 cents for every lottery ticket sold, more than \$3 million a year, according to *Texas Monthly*. Under pressure from the lottery commission, GTECH severed its relationship with Barnes for a buyout price of \$23 million.⁸⁰

Besides Barnes' \$288,500 in contributions to members of Congress since 1998, he has contributed at least \$237,000 to state candidates in Texas since 2000.⁸¹

7. James E. Boland

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
James E. Boland	1998-2005
Rhoads Group	1998-2001
Sundquist Anthony	2003-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$267,732	95.7
Democrats	\$12,100	4.3
Total	\$279,832	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Freddie Mac	\$1,400,000
Waste Management	\$1,080,000
Merrill Lynch	\$705,000
Greater Columbus Chamber Of Commerce	\$630,000
O'Rourke, Law Offices Of John T. Limited	\$620,000
Reliant Energy	\$560,000
Morgan Stanley Dean Witter & Co.	\$520,000
College Of American Pathologists	\$300,000
Barton-Cotton	\$290,000

*Total receipts include only amounts paid by client in semi-annual periods in which Boland represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Rep. John Boehner (R-Ohio)	\$38,255
Rep. Jim McCrery (R-La.)	\$35,000
Rep. Michael Oxley (R-Ohio)	\$26,500
Rep. Dave Hobson (R-Ohio)	\$20,344
Rep. Deborah Pryce (R-Ohio)	\$17,250
Rep. Tom Reynolds (R-N.Y.)	\$12,000
Rep. Tom DeLay (R-Texas)	\$11,683
Rep. Bob Ney (R-Ohio)	\$11,000
Rep. Rob Portman (R-Ohio)*	\$9,500
Sen. Saxby Chambliss (R-Ga.)	\$9,000

* Congressional service ended in 2004

James Boland, a former deputy comptroller of the currency, lobbied through 2005 (the most recent year for which disclosure forms are available) for registrants James E. Boland and Sundquist Anthony.⁸² Sundquist Anthony was formed in 2003. Its principals at founding were former Rep. and Gov. Don Sundquist (R-Tenn.), former Rep. Beryl Anthony (D-Ark.) and former Sen. David Pryor (D-Ark.).⁸³

Boland's firms have received \$1.4 million in lobbying fees since 2001 from Freddie Mac, a government sponsored enterprise (GSE) created by Congress to provide financing for the housing market. More than \$1.3 million of this money was paid to Boland's eponymous firm. Boland was the sole lobbyist in each reporting period for which the firm James E. Boland reported lobbying on behalf of Freddie Mac.⁸⁴

Boland's reports on his activities on behalf of Freddie Mac are vague. His initial reports reported lobbying on "issues affecting government sponsored enterprises." More recently, his description of lobbying issues has been limited to "issues related to GSE's."⁸⁵

Freddie Mac, and its cousin Fannie Mae, have been under fire from critics who contend they receive favorable treatment over competitors because their government backing amounts to a subsidy. In May 2005, Federal Reserve Board Chairman Alan Greenspan accused Freddie Mac and Fannie Mae of padding their profits with high-risk investments backed by government protection.⁸⁶

Freddie Mac has faced other travails in recent years, largely stemming from its use of campaign contributions and lobbying expenditures as levers to secure favorable treatment:

- In early May 2006, Freddie Mac filed amended lobbying forms that added several lobbyists who had not been included in its original forms.⁸⁷
- The firm agreed in April 2006 to settle allegations that it made illegal campaign contributions by paying the FEC a fine of \$3.8 million, dwarfing the commission's previous record fine of \$849,000. The investigation that led to the fine sprang from a 2003 complaint filed by Public Citizen that accused in-house Freddie Mac lobbyist Mitchell Delk, his wife Amanda, the Washington restaurant Galileo and a political consulting firm of making illegal political contributions.⁸⁸
- Also in April, Freddie Mac agreed to pay \$410 million to settle class action lawsuits over accounting errors that led to a \$5 billion earnings restatement.⁸⁹
- In March 2006, Sens. Chuck Hagel (R-Neb.) and John Sununu (R-N.H.) introduced an amendment to lobbying reform legislation citing a *Washington Post* report that Freddie Mac and Fannie Mae combined to spend \$23 million on lobbying in 2005 while Congress was considering legislation to tighten oversight of the companies. The amendment called on the Government Accountability Office (GAO) "to study the lobbying activities of GSEs to determine whether these activities further their statutory housing mission."⁹⁰ The amendment was ruled non-germane.

Rep. Michael Oxley (R-Ohio), who has purview over Freddie Mac as the chair of the House Financial Services Committee, has been the No. 3 congressional recipient of contributions from Boland since 1998, receiving \$26,500. Delk, a central figure in the Freddie Mac campaign contribution scandal, wrote in his 2001 performance appraisal that Freddie Mac had held more than 40 fundraisers for Oxley. A news report on Freddie Mac's settlement of charges with the FEC in April 2006 cited a document in which Delk claimed he had held more than 75 events for members of House Financial Services Committee. Delk claimed the events had raised nearly \$3 million. Delk wrote "90 percent of [the] events were hosted by M. Delk to benefit Chairman Oxley."⁹¹

The Greater Columbus Chamber of Commerce has been another of Boland's major clients. The organization has paid Sundquist Anthony \$630,000 since 2003 for Boland and his colleagues to lobby on a single bill, the \$286.4 billion Transportation Equity Act of 2005, which included a whopping \$23 billion in earmarked funds and drew the wrath of Rep. Jeff Flake (R-Ariz.), who complained, "We were all offered at least \$14 million for our districts to spend however we wanted – and just try to relate it to transportation somehow."⁹²

Some districts received more than \$14 million, including Ohio's 7th District, which skirts Columbus. The 7th received \$42.4 million in earmarks, according to Rep. Dave Hobson (R-Ohio), who represents the district. These earmarks included \$30.4 million for an intermodal rail facility at Rickenbacker Airport that will increase freight capacity. In addition, Hobson worked with Ohio Republican Reps. Deborah Pryce and Pat Tiberi to bring in an additional \$90 million for the Heartland Corridor Project, which includes the Rickenbacker Airport project as a key component. Hobson also worked with Rep. Mike Oxley to secure \$528,000 for the Ohio Port Authority.⁹³

Boland has donated \$20,344 to Hobson, \$17,250 to Pryce and \$26,500 to Oxley.

One of Boland's clients is among the most generous lobbyist-contributors. Boland has reported \$620,000 in lobbying revenue from the Law Offices of John T. O'Rourke. O'Rourke, a lobbyist, has contributed \$182,478 to members of Congress since 1998, placing him 29th, one spot ahead of disgraced lobbyist Jack Abramoff.

8. James and Camille Bares Massie

Organization(s) for Which Individual Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
SBC Communications (Camille Bares Massie)	1998-2000
Alpine Group Inc. (James Massie)	1998-2005
Jackson National Life Insurance (James Massie)	2004-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$139,971	52.6
Democrats	\$126,212	47.4
Total	\$266,183	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Council On Radionuclides & Radiopharmaceuticals (James Massie)	\$2,940,000
Croplife America (James Massie)	\$1,780,000
Medical Imaging Contrast Agent Assn. (James Massie)	\$1,300,000
Cinergy Corp. (James Massie)	\$960,000
Jackson National Life Insurance (James Massie)	\$900,000
Southwire Co. (James Massie)	\$895,000
BP America (James Massie)	\$715,000
National Corn Growers Association (James Massie)	\$620,000
El Paso Corp. (James Massie)	\$610,000
Toyota Motor Sales (James Massie)	\$540,000

*Total receipts include only amounts paid by client in semi-annual periods in which Massie represented client. Lobbying expenditures of SBC Communications, for which Camille Bares Massie served as an in-house lobbyist from 1998-2000, are not included.

Top Congressional Recipients of Lobbyist's Contributions Since 1998

Member of Congress	Amount
Sen. Blanche Lincoln (D-Ark.)	\$8,000
Rep. Chris John (D-La.)*	\$7,800
Sen. Mary Landrieu (D-La.)	\$7,000
Sen. George Voinovich (R-Ohio)	\$6,912
Rep. Jim McCrery (R-La.)	\$5,908
Rep. Sam Johnson (R-Texas)	\$5,750
Rep. Earl Pomeroy (D-N.D.)	\$5,500
Rep. John Dingell (D-Mich.)	\$5,500
Rep. Bart Stupak (D-Mich.)	\$5,320
Rep. Ray LaHood (R-Ill.)	\$5,250

* Congressional service ended in 2004

James Massie has worked as a lobbyist since 1981. The Alpine Group, his employer, crow's that Massie has created an extensive network of members of Congress and staffers during his 25 years on the Hill. He currently specializes in environmental, energy, tax, and health care policy.⁹⁴ Wife Camille Bares Massie worked as a lobbyist for SBC Communications (now AT&T) from 1998 to 2000.⁹⁵

The Massies' \$266,183 in donations are split 52.6 percent to Republicans and 47.4 percent to Democrats. While such splits among couples may reflect canceled out contributions of husbands and wives who have opposing ideologies, this does not appear to be the case with the Massies. Both have given liberally to both parties.

Camille Bares Massie has contributed to the likes of Rep. Tom Reynolds (R-N.Y.), the current chair of the Republican National Congressional Committee and Rep. Tom DeLay (R-Texas), the former majority leader noted for his fiercely partisan approach to politics. Meanwhile, she has given to Reps. Bart Stupak and Sander Levin, both Michigan Democrats; former Sen. Tom Daschle (D-S.D.), who served both as Senate majority leader and Senate minority leader, and to former Rep. Nick Lampson (D-Texas), who lost his seat in 2004 after a controversial redistricting coordinated by DeLay. Lampson was set to challenge DeLay for his seat in November 2006 until DeLay announced in April 2006 that he would not seek reelection. James Massie has contributed to each of these candidates, as well.

The recipients of the Massies' contributions appear to reflect the energy, environmental and tax specializations of James Massie. The Massies have made contributions to 29 of the 57 House Energy and Commerce Committee members and seven of the 18 senators on the Senate Environment and Public Works Committee; they have contributed to the campaign funds of 12 of the 22 Senators on the Energy and Natural Resources Committee; among committees with jurisdiction over tax policy, they have given to 10 of the 22 members of the Senate Budget Committee, 30 of the 41 members of the House Ways and Means committee, 11 members of the House Appropriations Committee and nine members of the Senate Appropriations Committee.

The sway of Massie's Alpine Group over the House Energy and Commerce Committee was so great that Rep. Edward Markey (D-Mass.) demanded during a 2005 committee hearing that the Alpine Group lobbyists raise their hands and identify themselves. The committee was discussing an amendment that would loosen the constraints on exporting bomb-grade uranium, a move supported by the Council on Radionuclides and Radiopharmaceuticals, which Massie represents, that had previously been rejected amid criticism from members of both parties that it would accelerate the worldwide production of nuclear materials. The measure was a boon to Ottawa-based MDS Nordion, the leading producer of a certain type of isotope.⁹⁶

"I've never done that before, but this is outrageous," Markey said of his stunt to draw attention to the Alpine Group lobbyists. "To save one Canadian company some money, we're willing to blow a hole in our nonproliferation policies."⁹⁷

The measure was supported by the Council on Radionuclides and Radiopharmaceuticals (CRR), of which MDS Nordion is a member.⁹⁸ The CRR has paid the Alpine Group more than \$2.9 million since 1998, more than any other client for which Massie has lobbied.⁹⁹

The measure was proposed by Sen. Richard Burr (R-N.C) with the support of Sen. Blanche Lincoln (D-Ark.).¹⁰⁰ Lincoln is the top congressional recipient of the Massies' campaign contributions since 1998. The Massies have contributed a total of nearly \$50,000 (\$49,396) to members of the House Energy and Commerce Committee.

In response to the inclusion of the amendment in the massive energy bill that was passed in the summer of 2005, a senior staff scientist with the Union of Concerned Scientists said, "It really is amazing. To get something as outrageous as this, that's skillful lobbying."¹⁰¹

Massie lobbied on the 2005 energy bill on behalf of several of his other top clients: BP America, Cinergy and the National Corn Growers Association (NCGA).

The NCGA, which has paid Alpine \$620,000 since 1998, applauded the mandates calling for 7.5 billion gallons of ethanol and biodiesel to be used by 2012. NCGA President Leon Corzine stated, "We are particularly happy that this bill will expand the use of domestic renewable fuels."¹⁰² Lincoln co-sponsored the extension of the biodiesel tax credit.¹⁰³

The Energy Policy Act also provides up to \$350 million in tax credits for gasification projects and a federal loan guarantee program.¹⁰⁴ While the electric power industry has generally been slow to move on gasification, Cinergy Corp., which has paid Alpine \$960,000 in lobbying fees since 1998, has announced plans to build coal gasification units. BP, which has paid the Alpine group \$715,000 since 1998, also has plans to build a coke gasification plant.¹⁰⁵

The Energy Policy Act's repeal of the Public Utility Holding Company Act of 1935 has allowed utility giants to go ahead with mergers. On such merger is a \$9.1 billion deal between Duke Energy and Cinergy.¹⁰⁶

Rep. Ray LaHood (R-Ill.), ranks No. 10 among the congressional recipients of the Massies' campaign contributions since 1998 and has benefited from fundraisers sponsored by James Massie. But in January 2005, as the Jack Abramoff scandal continued to expand, LaHood sent a letter to Massie and 22 other lobbyists alerting them that he would no longer avail himself of their fundraising services.¹⁰⁷

"In the past, we have asked each of you to sponsor an event and commit to raise money on my behalf," LaHood wrote. "I believe this could be perceived as a special relationship, and I am confident all of us want to avoid this perception."¹⁰⁸

9. Van D. Hipp Jr.

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
American Defense International	1998-2005
ASIS International	2005
McVey Co.	1998

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$214,771	82.1
Democrats	\$46,750	17.9
Total	\$261,521	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Raytheon Missile Systems	\$1,440,000
Ruag Munition	\$800,000
Sarnoff Corp.	\$720,000
EastWest Industries	\$640,000
Ensign-Bickford Aerospace & Defense	\$620,000
Gentex Corp.	\$620,000
Vitel Net	\$620,000
Lexicon Genetics	\$600,000
Bofors Defence	\$560,000
Drexel University	\$560,000

*Total receipts include only amounts paid by client in semi-annual periods in which Hipp represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Rep. Harold Rogers (R-Ky.)	\$14,500
Rep. Duncan Hunter (R-Calif.)	\$11,750
Sen. Mitch McConnell (R-Ky.)	\$10,000
Rep. Charles Taylor (R-N.C.)	\$9,000
Rep. Joe Wilson (R-S.C.)*	\$9,000
Rep. Eric Cantor (R-Va.)	\$8,500
Rep. Robert Aderholt (R-Ala.)	\$7,000
Sen. Edward Kennedy (D-Mass.)	\$7,000
Rep. Walter Jones Jr. (R-N.C.)	\$6,500
Rep. Martin Sabo (D-Minn.)	\$6,500

*Congressional service began in 2003

Van D. Hipp has been on both ends of campaign contribution relationships. In 1997, he was sentenced to five years probation with three months of house arrest, fined \$5,000, and ordered to do 200 hours of community services for accepting illegal campaign contributions during a failed 1994 congressional campaign.¹⁰⁹

Hipp's congressional campaign came on the heels of his service as chairman of the South Carolina Republican Party from 1987 to 1989.¹¹⁰

Hipp contends that the conviction was the last straw in his political career. "I told my family if they see me going to a precinct meeting, they have the right to have me committed to a mental institution," he said.¹¹¹

As a lobbyist for American Defense International, of which he is chairman, Hipp has been a contributor, rather than a recipient, of campaign funds. The firm's advertised services include "marketing a product or service to the federal government" for clients. Hipp is likely aided in his

work by his background as a former deputy assistant secretary of the Army and as the Navy's No. 2 lawyer under Defense Secretary Dick Cheney during the first Bush administration.

Hipp has concentrated his contributions on members who serve on the House and Senate appropriations committees, armed services committees and members of the leadership.

- Four of the top 10 recipients of Hipp's contributions serve on appropriations committees, including Rep. Harold Rogers (R-Ky.), who is Hipp's top recipient. Other recipients on appropriations are Rep. Charles Taylor (R-N.C.), Rep. Robert Aderholt (R-Ala.) and Rep. Martin Sabo (D-Minn.).
- Another four of Hipp's top 10 recipients serve on the armed services committees, including House Armed Services Committee Chairman Duncan Hunter (R-Calif.), who ranks No. 2 on Hipp's list, with \$11,750 in receipts. Others include Rep. Joe Wilson (R-S.C.), Sen. Edward Kennedy (D-Mass.) and Rep. Walter Jones Jr. (R-N.C.).

Sen. Minority Whip Mitch McConnell (R-Ky.) and House Chief Deputy Whip Eric Cantor (R-Va.) also rank in Hipp's top 10.

10. David Bockorny

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Bergner Bockorny Castagnetti Hawkins & Brain	1998-2004
Bockorny Petrizzo	2004-2005
American Medical Security	2003
Kaiser Foundation Health Plan	2003

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$257,927	100
Democrats	\$0	0
Total		—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
American Hospital Assn.	\$2,020,000
Newscorp USA	\$1,850,000
GlaxoSmithKline	\$1,560,000
Monsanto Co.	\$1,540,000
Computer Coalition For Responsible Exports	\$1,360,000
National Assn of Real Estate Investment Trusts	\$1,350,000
American Bankers Assn.	\$1,340,000
Diageo	\$1,320,000
Elanco Animal Health	\$1,080,000
Petroleum Marketers Assn of America	\$1,000,000

*Total receipts include only amounts paid by client in semi-annual periods in which Bockorny represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Rep. John Boehner (R-Ohio)	\$20,000
Rep. Tom DeLay (R-Texas)	\$17,135
Sen. Trent Lott (R-Miss.)	\$15,750
Rep. Rob Portman (R-Ohio)*	\$9,000
Rep. Dennis Hastert (R-Ill.)	\$8,500
Sen. Rick Santorum (R-Penn.)	\$8,250
Rep. Jim McCrery (R-La.)	\$7,483
Sen. Mitch McConnell (R-Ky.)	\$7,200
Sen. Don Nickles (R-Okla.)*	\$7,000
Sen. Gordon Smith (R-Ore.)	\$7,000

*Congressional service ended in 2004

David Bockorny served as a special assistant to the president for legislative affairs in the Reagan administration. In 2005, he made the list of top lobbyists, or "hired guns," ranked by *The Hill*, a paper the covers Capitol Hill.¹¹²

Bockorny is an excellent example of what else a lobbyist can offer politicians. Besides contributing more than a quarter million dollars to the political committees of members of Congress, Bockorny is also on the board of the Congressional Institute, a non-profit organization that pays for retreats of members of Congress and their staffs. Of the 15 members of its board, 14 are registered lobbyists.¹¹³

The Institute's stated mission includes the goal of "helping members of Congress better serve the nation," but the group is selective in whom it helps.¹¹⁴ Each of the 74 trips by members of Congress sponsored by the Institute from 2000 to 2004 involved Republican members.¹¹⁵

Surveys of staff travel reports maintained by the clerk of the House have found similarly one-sided ratios in the subjects of Congressional Institute-sponsored trips. In just 2004 and 2005, the Congressional Institute financed over \$40,000 of travel expenditures for Rep. Tom DeLay (R-Texas) and his staff, alone.¹¹⁶

Bockorny has also hosted fundraisers for members of Congress. Augmenting the \$17,135 Bockorny has contributed to DeLay, he was one of the sponsors of a fundraiser for DeLay in November 2005.¹¹⁷ In the three days following the fundraiser, DeLay reported over \$125,000 in contributions.¹¹⁸

Section III: Snapshots of the Next Ten Lobbyist-Contributors

11. Paul Magliocchetti

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
General Atomics	1998-1999
PMA Group	1998-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$63,600	25.3
Democrats	\$187,950	74.7
Total	\$251,550	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
DRS Technologies	\$3,240,000
L-3 Communications Corp.	\$2,040,000
Dynamics Research Corp.	\$1,860,000
Boeing	\$1,660,000
Lockheed Martin Corp.	\$1,580,000
EDO Reconnaissance & Surveillance Systems	\$1,460,000
General Dynamics	\$1,380,000
Concurrent Technologies Corp.	\$1,340,000
Cryptek Secure Communications	\$1,120,000
Health Net Federal Services	\$1,040,000

*Total receipts include only amounts paid by client in semi-annual periods in which Magliocchetti represented client. Totals listed do not include General Atomics, for which Magliocchetti worked as an in-house lobbyist from 1998-1999.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Rep. Pete Visclosky (D-Ind.)	\$33,000
Rep. James Moran (D-Va.)	\$17,000
Rep. Norm Dicks (D-Wash.)	\$15,000
Rep. Steny Hoyer (D-Md.)	\$14,000
Sen. John Sununu (R-N.H.)	\$13,250
Rep. John Murtha (D-Pa.)	\$12,000
Rep. Loretta Sanchez (D-Calif.)	\$10,000
Rep. John Mica (R-Fla.)	\$8,850
Rep. Jerry Lewis (R-Calif.)	\$8,500
Rep. Alan Mollohan (D-W.Va.)	\$8,000

12. Gerald Cassidy**Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998***

Registrant	Year(s)
Cassidy & Associates	1998-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

**Contributions Lobbyist Has Made to
Members of Congress Since 1998**

Party	Amount	Percentage
Republicans	\$13,500	5.5
Democrats	\$233,250	94.5
Total	\$246,750	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Boston University	\$6,020,000
Taiwan Studies Inst.	\$4,900,000
Ocean Spray Cranberries	\$2,940,000
UMass Memorial Health Care	\$1,600,000
Research Foundation Of The City University	\$1,140,000
Northwestern University	\$1,020,000
Tufts University	\$950,000
Fuelcell Energy	\$860,000
Hunton & Williams	\$720,000
Worcester Polytechnic Inst.	\$580,000

*Total receipts include only amounts paid by client in semi-annual periods in which Cassidy represented client.

**Top Congressional Recipients of Lobbyist's
Contributions Since 1998**

Member of Congress	Amount
Sen. Tom Daschle (D-S.D.)*	\$27,000
Sen. Harry Reid (D-Nev.)	\$13,000
Sen. Edward Kennedy (D-Mass.)	\$11,000
Sen. John Kerry (D-Mass.)	\$10,000
Sen. Hillary Clinton (D-N.Y.)**	\$10,000
Rep. John Murtha (R-Penn.)	\$9,500
Rep. Edward Markey (D-Mass.)	\$9,000
Sen. Tom Harkin (D-Iowa)	\$9,000
Sen. Arlen Specter (R-Penn.)	\$8,000
Rep. Steny Hoyer (D-Md.)	\$7,000

* Congressional service ended in 2004

** Congressional service began in 2001

13. Frederick Graefe**Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998***

Registrant	Year(s)
Baker & Hostetler	1998-2002
Law Offices of Frederick H. Graefe	2004-2005
Hunton & Williams	2002-2004
Invacare Corp.	2003-2005
Cleveland Clinic Foundation	2002-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

**Contributions Lobbyist Has Made to
Members of Congress Since 1998**

Party	Amount	Percentage
Republicans	\$38,500	16.8
Democrats	\$190,242	83.2
Total	\$228,742	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Trans World Assurance Co.	\$820,433
Invacare Corp.	\$703,019
Federation Of American Hospitals	\$695,433
Schering Berlin	\$680,000
American Health Sciences Education Consortium	\$600,000
Citigroup	\$600,000
American Wireless Freedom Coalition	\$580,000
Proton Therapy Group	\$505,242
Amgen	\$501,114
RMS Disease Management	\$440,000

*Total receipts include only amounts paid by client in semi-annual periods in which Graefe represented client. Lobbying expenditures of Cleveland Clinic Foundation and Invacare Corp., for which Graefe has served as an in-house lobbyist, are not included.

**Top Congressional Recipients of Lobbyist's
Contributions Since 1998**

Member of Congress	Amount
Sen. Tom Daschle (D-S.D.)*	\$17,500
Sen. Kent Conrad (D-N.D.)	\$15,321
Rep. Ellen Tauscher (D-Calif)	\$15,139
Rep. Dave Hobson (R-Ohio)	\$10,000
Rep. Ralph Regula (R-Ohio)	\$9,000
Sen. Blanche Lincoln (D-Ark.)	\$8,893
Rep. Steny Hoyer (D-Md.)	\$8,000
Sen. Harry Reid (D-Nev.)	\$7,750
Sen. Chuck Grassley (R-Iowa)	\$7,000
Sen. Tom Carper (D-Del.)	\$5,218

* Congressional service ended in 2004

14. Stewart Hall

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Federalist Group	1999-2005

*Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$221,460	98.2
Democrats	\$4,000	17.8
Total	\$225,460	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
National Rifle Association	\$1,780,000
Altria Corp Services	\$1,720,000
Colsa Corp.	\$960,000
Office Furniture Manufacturers Coalition	\$880,000
Birmingham Airport Authority	\$780,000
Pernod Ricard	\$780,000
Verizon	\$780,000
UST Public Affairs	\$700,000
American Petroleum Inst.	\$630,000
Bell South Corp.	\$580,000

*Total receipts include only amounts paid by client in semi-annual periods in which Hall represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Sen. Richard Shelby (R-Ala.)	\$49,000
Sen. Jeff Sessions (R-Ala.)	\$17,400
Rep. Terry Everett (R-Ala.)	\$12,000
Sen. Trent Lott (R-Miss.)	\$8,000
Rep. Ernest Istook, Jr. (R-Okla.)	\$8,000
Sen. John E. Sununu (R-N.H.)	\$7,500
Sen. Mitch McConnell (R-Ky.)	\$7,000
Sen. James Inhofe (R-Okla.)	\$7,000
Sen. Conrad Burns (R-Mont.)	\$6,000
Rep. Jo Bonner (R-Ala.)*	\$6,000

* Congressional service began in 2003

15. Peter Madigan

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Rhoads Group	1998-2000
Johnson Madigan Peck Boland & Stewart	2001-2005
Bradley Arant Rose & White	2001

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$223,700	99.3
Democrats	\$1,500	0.7
Total	\$225,200	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Poongsan Corp	\$1,980,000
Altria Corporate Services Inc.	\$1,560,000
International Employee Stock Option Coalition	\$1,360,000
Alliance Of Automobile Manufacturers	\$980,000
Fannie Mae	\$820,000
Deloitte & Touche	\$720,000
Charles Schwab & Co.	\$680,000
Bearingpoint	\$600,000
Ford Motor Co.	\$600,000
Bank Of New York	\$580,000
New Zealand – US Business Council	\$580,000
Bell Atlantic Corp.	\$580,000

*Total receipts include only amounts paid by client in semi-annual periods in which Madigan represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Sen. John McCain (R-Ariz.)	\$15,000
Sen. Susan Collins (R-Maine)	\$12,000
Rep. Tom Delay (R-Texas)	\$11,000
Rep. Michael Oxley (R-Ohio)	\$10,500
Sen. Don Nickles (R-Okla.)*	\$10,000
Sen. Bill Frist (R-Tenn.)	\$10,000
Sen. Gordon Smith (R-Ore.)	\$9,500
Sen. John E. Sununu (R-N.H.)	\$9,500
Sen. Olympia Snowe (R-Maine)	\$9,300
Sen. George Allen (R-Va.)**	\$8,400

* Congressional service ended in 2004

** Congressional service began in 2001

16. Bruce Gates

**Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998***

Registrant	Year(s)
Ryan Phillips Utrecht & MacKinnon	1998-1998
Akin Gump Strauss Hauer & Feld	2003
Washington Council - Ernst & Young	2001-2005
Ernst & Young	2001
Washington Counsel	1998-2000

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

**Contributions Lobbyist Has Made to
Members of Congress Since 1998**

Party	Amount	Percentage
Republicans	\$225,061	100
Democrats	\$0	0
Total	\$225,061	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Merrill Lynch	\$4,700,000
RJ Reynolds Tobacco Co	\$3,060,000
Ford Motor Co.	\$2,130,000
Aetna Life & Casualty	\$1,955,000
Securities Industry Assn	\$1,800,000
General Electric Co.	\$1,700,000
Charles Schwab & Co.	\$1,640,000
Ziff Investors Partnership	\$1,480,000
National Association Of Real Estate Investment Trusts	\$1,440,000
American Insurance Assn.	\$1,420,000

*Total receipts include only amounts paid by client in semi-annual periods in which Gates represented client.

**Top Congressional Recipients of Lobbyist's
Contributions Since 1998**

Member of Congress	Amount
Rep. John Boehner (R-Ohio)	\$40,976
Rep. Jim McCrery (R-La.)	\$30,500
Rep. Rob Portman (R-Ohio)*	\$26,000
Rep. Tom DeLay (R-Texas)	\$21,567
Rep. Michael Oxley (R-Ohio)	\$13,000
Rep. Roy Blunt (R-Mo.)	\$12,500
Sen. Richard Burr (R-N.C.)	\$6,500
Rep. Dennis Hastert (R-Ill.)	\$6,000
Rep. Tom Latham (R-Iowa)	\$5,000
Sen. Bill Frist (R-Tenn.)	\$5,000

* Congressional service ended in 2004

17. Gary and Susan Andres

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Andres-McKenna Research Group (Gary Andres)	2001-2004
Dutko Worldwide (Gary Andres)	1998-2005
Union Pacific Corp. (Susan Andres)	1998-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$222,547	100
Democrats	\$0	0
Total	\$222,547	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Pacificare (Gary Andres)	\$1,655,000
National Ground Water Assn. (Gary Andres)	\$1,227,200
Sprint (Gary Andres)	\$1,130,000
Union Pacific (Gary Andres)	\$1,102,500
Household Intl. (Gary Andres)	\$776,000
Accenture (Gary Andres)	\$708,000
FDX Corp. (Gary Andres)	\$696,500
Discus (Gary Andres)	\$684,000
Charles Schwab (Gary Andres)	\$650,000
Justice Project (Gary Andres)	\$560,000

*Total receipts include only amounts paid by client in semi-annual periods in which Andres represented client. Lobbying expenditures of Union Pacific Corp., for which Susan Andres has served as an in-house lobbyist, are not included.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Rep. Tom DeLay (R-Texas)	\$30,706
Rep. John Boehner (R-Ohio)	\$22,803
Sen. Don Nickles (R-Okla.)*	\$11,095
Rep. Deborah Pryce (R-Ohio)	\$10,094
Rep. Dennis Hastert (R-Ill.)	\$9,500
Rep. Rob Portman (R-Ohio)*	\$9,050
Rep. Dick Armey (R-Texas)**	\$8,000
Rep. Roy Blunt (R-Mo.)	\$7,000
Rep. Jim McCrery (R-La.)	\$6,983
Rep. Michael Oxley (R-Ohio)	\$5,000

* Congressional service ended in 2004

** Congressional service ended in 2002

18. Joel Jankowsky**Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998***

Registrant	Year(s)
Akin Gump Strauss Hauer & Feld	1998-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

**Contributions Lobbyist Has Made to
Members of Congress Since 1998**

Party	Amount	Percentage
Republicans	\$0	0
Democrats	\$221,970	100
Total	\$221,970	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Gila River Indian Community	\$9,560,000
AT&T	\$8,090,000
PG&E Corp.	\$4,740,000
Mortgage Insurance Cos. Of America	\$3,960,000
Florida Citrus Mutual	\$3,860,000
Motion Picture Assn Of America	\$3,320,000
Liberty Mutual Insurance Co.	\$2,820,000
Dow Chemical Co.	\$2,760,000
Boeing Co.	\$2,420,000
FM Policy Focus	\$2,400,000

*Total receipts include only amounts paid by client in semi-annual periods in which Jankowsky represented client.

**Top Congressional Recipients of Lobbyist's
Contributions Since 1998**

Member of Congress	Amount
Sen. Tom Daschle (D-S.D.)*	\$41,500
Rep. Richard Gephardt (D-Mo.)*	\$23,000
Rep. Steny Hoyer (D-Md.)	\$20,000
Rep. Nancy Pelosi (D-Calif.)	\$15,250
Rep. Brad Carson (D-Okla.)*	\$13,000
Rep. Edward Markey (D-Mass.)	\$10,000
Rep. Martin Frost (D-Texas)*	\$9,000
Sen. Harry Reid (D-Nev.)	\$8,000
Sen. John Kerry (D-Mass.)	\$8,000
Sen. Bill Nelson (D-Fla.)	\$5,500

* Congressional service ended in 2004

19. Timothy Rupli**Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998***

Registrant	Year(s)
Federalist Group	2000-2001
Fleishman-Hillard Government Relations	1998-2000
Rupli, Timothy R. & Associates	2000-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

**Contributions Lobbyist Has Made to
Members of Congress Since 1998**

Party	Amount	Percentage
Republicans	\$131,067	60.7
Democrats	\$84,704	39.3
Total	\$215,771	--

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Community Financial Services Assn Of America	\$2,000,000
United To Secure America	\$1,510,000
Memberworks Inc.	\$1,160,000
MD Anderson Cancer Center	\$980,000
Coalition For Fair & Affordable Lending	\$700,000
Texarkana Chamber Of Commerce	\$480,000
Garden State Cancer Center	\$380,000
Entergy Services	\$360,000
Independent Community Bankers Of America	\$300,000
Peabody Group	\$280,000

*Total receipts include only amounts paid by client in semi-annual periods in which Rupli represented client.

**Top Congressional Recipients of Lobbyist's
Contributions Since 1998**

Member of Congress	Amount
Rep. Tom DeLay (R-Texas)	\$10,000
Rep. Brad Sherman (D-Calif.)	\$8,800
Sen. Richard Shelby (R-Ala.)	\$8,386
Rep. Tom Feeney (R-Fla.)*	\$6,950
Rep. Mike Ross (D-Ark.)**	\$6,824
Rep. Paul Kanjorski (D-Penn.)	\$6,500
Rep. David Scott (D-Ga.)*	\$6,000
Rep. Deborah Pryce (R-Ohio)	\$5,500
Rep. Adam Schiff (D-Calif.)**	\$5,000
Rep. Kendrick Meek (D-Fla.)*	\$5,000
Rep. Pete Sessions (R-Texas)	\$5,000
Rep. Jeb Hensarling (R-Texas)*	\$5,000

* Congressional service began in 2003

** Congressional service began in 2001

20. James E. Smith

Organization(s) for Which Individual
Has Registered as a Lobbyist Since 1998*

Registrant	Year(s)
Smith Segel & Sowalsky	1998-2002
Smith-Free Group	1998-2005

* Registrant refers to lobbying firms for which lobbyist worked or companies for which individual served as an in-house lobbyist.

Contributions Lobbyist Has Made to
Members of Congress Since 1998

Party	Amount	Percentage
Republicans	\$197,148	92.1
Democrats	\$16,872	7.9
Total	\$214,020	—

Clients that Paid Most to Lobbyist's Firm(s)

Client	Total Receipts*
Federal Home Loan Mortgage Corp.	\$2,340,000
Northwestern Mutual Life Insurance	\$1,580,000
Mastercard International	\$1,440,000
MBNA Corp.	\$1,410,000
CSX Corp.	\$1,020,000
Federal Agricultural Mortgage Corp.	\$760,000
Visa USA	\$540,000
HCA The Healthcare Co.	\$520,000
Washington Mutual	\$400,000
Verizon	\$395,000

*Total receipts include only amounts paid by client in semi-annual periods in which Smith represented client.

Top Congressional Recipients of Lobbyist's
Contributions Since 1998

Member of Congress	Amount
Rep. Roy Blunt (R-Mo.)	\$15,697
Sen. Mitch McConnell (R-Ky.)	\$8,500
Sen. Michael Enzi (R-Wyo.)	\$8,293
Sen. Robert Bennett (R-Utah)	\$8,000
Rep. Michael Oxley (R-Ohio)	\$7,000
Rep. Michael Castle (R-Del.)	\$6,500
Sen. Richard Shelby (R-Ala.)	\$5,000
Sen. Chuck Hagel (R-Neb.)	\$5,000
Sen. Lindsey Graham (R-S.C.)	\$4,500
Rep. / Sen. John Thune (R-S.D.)*	\$4,500

* Only includes contributions made between 1998 and November 2002, when Thune was a member of the House, and contributions made since November 2004, when Thune was elected to U.S. Senate.

Section IV: Legal Justifications for Limiting Lobbyists' Gifts

No single reform would do as much to prevent the corruption and the appearance of corruption in lobbying than to break the nexus between lobbyists and campaign money for officeholders. A restriction on campaign contributions by lobbyists would need to be narrowly tailored to avoid infringing on First Amendment rights.

Summary of the Legislative Proposal

Public Citizen recommends that:

- Contributions from lobbyists and lobbying firm PACs to federal candidates be capped at \$200 per election and contributions to national parties and leadership PACs be capped at \$500 per election cycle;
- Lobbyists and lobbying firms be prohibited from soliciting, arranging or delivering contributions to federal candidates or from serving as officials on candidates' campaign committees and leadership PACs; and
- Lobbyists, lobbying firms and organizations that maintain lobbying operations be prohibited from paying or arranging payments for events "honoring" members of Congress and political parties, such as parties at national conventions, and from contributing or arranging contributions to entities established or controlled by members of Congress, such as foundations.

The Supreme Court Has Recognized the Right to Treat Lobbyists Differently

In 1954, the Supreme Court upheld the 1946 Federal Regulation of Lobbying Act. The act, which was the first attempt by Congress to compel disclosure of paid lobbying activities by domestic entities, proved to have too many loopholes to be effective. But, in upholding the law, the Court acknowledged the legality of imposing a modest regulatory scheme on a certain class of people – lobbyists – engaging in the constitutionally protected activity of petitioning the government.

"Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise, the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the lobbying act was designed to help prevent."¹¹⁹

Courts Have Upheld Certain Restrictions on Contributions from Lobbyists

The California Supreme Court in 1979 shot down a statute banning all contributions from lobbyists as overly broad, although the court recognized that a state had a compelling interest in "ridding the political system of both apparent and actual corruption and improper influence."¹²⁰

In response, California implemented a somewhat more narrowly drawn statute, prohibiting lobbyists from making campaign contributions to those whom they lobby.¹²¹ The Fair Political Practices Commission (FPPC) interpreted this provision to mean that lobbyists are banned from making contributions to candidates for elective office in the branch of government that they lobby. In other words, lobbyists are prohibited from making campaign contributions to candidates for the legislature, if they are registered to lobby the legislature, or candidates for executive office, if they are registered to lobby the executive branch, or both. A federal district court upheld this interpretation of the law.¹²²

Banning direct contributions from lobbyists to the officeholders whom they are attempting to influence is not a new idea. South Carolina has had a ban on campaign contributions from lobbyists to state candidates on the books since 1991. Kentucky prohibits those who lobby the legislature from making contributions to legislative candidates, and Alaska allows lobbyists to make campaign contributions but only to their own representatives. On February 15, 2006, Tennessee joined these four states when it approved its own reform legislation prohibiting direct campaign contributions from lobbyists to state candidates and officeholders.

In Alaska, the state Supreme Court upheld the restriction against campaign contributions from lobbyists to state legislators outside the district in which the lobbyist resides. The court held that lobbyists' contributions to those outside their own district appear to have more to do with influence peddling and are "especially susceptible to creating an appearance of corruption."¹²³

Most states that have some form of ban on lobbyist contributions to candidates have applied such bans only during particular time periods, such as while the legislature is in session. These bans are really time limits on contributions and not restrictions on lobbyists *per se*. These time limits on contributions, especially when they have applied to all persons rather than just lobbyists, have faced mixed results in the courts. Only two bans on contributions to legislative candidates while the legislature is in session have survived court challenge, in North Carolina and in Vermont.¹²⁴

Similar bans have been invalidated in Arkansas, Tennessee, Missouri, and Florida.¹²⁵ Nevertheless, many states continue the practice of banning contributions while the legislature is in session for everybody, including lobbyists.

Courts Have Upheld Regulation of Other Sectors' Campaign Activities

The courts have shown a willingness to uphold contribution bans that apply to particular sectors with a demonstrated history of corruption or the appearance of corruption. A "pay-to-play" restriction that bans campaign contributions from potential contractors to those responsible for awarding the contracts has been upheld by a federal court.¹²⁶

Eight states have banned contributions from gambling interests. These include:

- Indiana prohibits contributions from any officer or person who holds an interest in a gaming entity;¹²⁷
- Iowa prohibits contributions from riverboat gambling corporations;¹²⁸

- Kentucky prohibits contributions from persons owning lottery contracts;¹²⁹
- Louisiana prohibits contributions from casino officers or key employees;¹³⁰
- Michigan prohibits contributions from any licensee or person who has an interest in a gaming entity;¹³¹
- Nebraska prohibits contributions from lottery contractors for duration of contract and three years after;¹³²
- New Jersey prohibits contributions from casino officers or key employees;¹³³ and
- Virginia prohibits contributions from pari-mutual corporations, executives and their spouses and families.¹³⁴

Louisiana's and New Jersey's bans on contributions from those involved in the gambling industry have been upheld in the courts.¹³⁵ In Michigan, the attorney general has ruled that the state's ban on gaming contributions is constitutional.¹³⁶

In addition to the broader bans on campaign contributions from regulated sectors such as the gambling industry, several states have implemented more narrowly tailored restrictions on campaign contributions from regulated sectors to those whom are the regulators:

- Delaware, Florida, Montana, and Washington prohibit insurance agents from making contributions to candidates for the Office of Insurance Commissioner.¹³⁷
- Florida also prohibits licensed food outlets and convenience stores from contributing to candidates for Commissioner of Agriculture.¹³⁸
- Georgia prohibits public utilities from contributing to any political campaign.¹³⁹
- Georgia law further prohibits any regulated entity from contributing to any candidate for the office that regulates that entity.¹⁴⁰

A Basis Exists for Prohibiting Lobbyists from Soliciting Funds

None of the state laws or court decisions discussed above addresses restrictions of particular classes of persons soliciting or arranging campaign contributions from others. However, there appears to be a fairly firm constitutional basis for restricting comparable classes of persons from soliciting or arranging campaign contributions with other people's money. The First Amendment issues raised in the landmark court decisions on campaign financing, such as the *Buckley* and *McConnell* decisions, have focused on how contribution restrictions may affect a person's ability to exercise his or her own free speech with their own money.¹⁴¹

However, the *McConnell* decision went even further and explicitly upheld the bans on national party committees and federal officeholders soliciting and raising "soft money" and directing these contributions to others. As stated in *McConnell*:

"Nor is §323(a)'s prohibition on national parties' soliciting or directing soft-money contributions substantially overbroad. That prohibition's reach is limited, in that it bars only soft-money solicitations by national party committees and party officers acting in their official capacities; the committees themselves remain free to solicit hard money on their own behalf or that of state committees and state and local candidates and to contribute hard money to state committees and candidates."¹⁴²

The McConnell court reiterated the justification for banning the solicitation of soft money by national party committees:

"Section 323(d)'s restriction on solicitations is a valid anti-circumvention measure. Absent this provision, national, state, and local party committees would have significant incentives to mobilize their formidable fundraising apparatuses, including the peddling of access to federal officeholders, into the service of like-minded tax-exempt organizations that conduct activities benefiting their candidates. All of the corruption and the appearance of corruption attendant on the operation of those fundraising apparatuses would follow."¹⁴³

Appendix I: Congressional Contribution Laws

Contributions to the campaign committees and political action committees of members of Congress, often called leadership PACs, generally may only be made by individuals and political committees. Contributions and expenditures by corporations in direct support of candidates for federal office have been illegal since 1907.¹⁴⁴

Corporations were able to make contributions that affect elections by donating to political parties for “non-federal election activity” – known as “soft money” contributions – before the practice was banned by the Bipartisan Campaign Reform Act (BCRA) of 2002. In the aftermath of BCRA, which took effect following the 2002 election cycle, corporations have been able to influence federal elections by contributing to independent groups registered under Section 527 of the IRS tax code. The legality of contributions to these 527 groups – and the groups’ ability to spend the money to influence federal elections – in the post-BCRA era is in dispute. Not in dispute, however, is that current law does not permit 527 groups to coordinate their activities with federal candidates or the committees of national political parties.

During the 2006 election cycle, individuals are permitted to contribute no more than \$2,100 to a single candidate for federal office, including congressional candidates, per election (meaning a person could contribute \$4,200, total, for the primary and the general elections combined.) Individuals may also contribute no more than \$5,000 to a single leadership PAC per year. Their aggregate contributions to all federal committees may not exceed \$101,400 for the entire cycle. The aggregate total is more easily reached than might appear because individuals are permitted to contribute up to \$26,700 per cycle to a national party committee and up to \$61,400 to all national party committees and PACs combined.¹⁴⁵

BCRA increased the individual contribution limit from \$1,000 to \$2,000 and allowed for the contribution limits to candidates and parties, including the aggregate contribution limit, to be adjusted for inflation thereafter to the nearest \$100. The law left constant the annual limit on contributions to PACs.¹⁴⁶

For the 2004 election cycle, individuals were permitted to contribute \$2,000 to a candidate for federal office per election (meaning each for the \$2,000 for the primary and general elections), and \$5,000 per year to leadership PACs, up to an aggregate total of \$95,000 per election cycle. The limit on contributions to national committees and PAC was set at \$57,500.¹⁴⁷

In the 1998 through 2002 election cycles, individuals were permitted to contribute \$1,000 per election (meaning \$1,000 each for the primary and the general elections) and \$5,000 per year to leadership PACs, up to an aggregate total of \$25,000 per year (\$50,000 per cycle), including contributions to national parties.¹⁴⁸

Appendix II: State and Member Contribution Rankings

Figure 17: States Ranked By Average Contributions Received by Current Senate Delegation, 1998-2006

Rank	State	Average Contributions Received by Senator
1	Pennsylvania	\$1,091,439
2	Montana	\$630,482
3	Nevada	\$592,080
4	New York	\$583,016
5	Washington	\$551,786
6	Alabama	\$545,136
7	Iowa	\$543,931
8	North Dakota	\$534,750
9	Connecticut	\$516,489
10	Massachusetts	\$511,163
11	Mississippi	\$501,474
12	Alaska	\$468,943
13	Indiana	\$447,943
14	Utah	\$431,209
15	Louisiana	\$429,843
16	New Hampshire	\$393,311
17	Arizona	\$384,705
18	California	\$378,825
19	Virginia	\$375,660
20	Kentucky	\$356,536
21	North Carolina	\$342,461
22	Ohio	\$342,167
23	Missouri	\$318,098
24	Nebraska	\$305,997
25	Oregon	\$300,891
26	Delaware	\$299,364
27	South Dakota	\$293,868
28	South Carolina	\$288,645
29	Maryland	\$284,555
30	Tennessee	\$282,592
31	New Mexico	\$276,967
32	Vermont	\$274,557
33	Georgia	\$272,209
34	Arkansas	\$258,238
35	Illinois	\$255,821
36	Maine	\$235,346
37	Michigan	\$232,210
38	Florida	\$218,342
39	West Virginia	\$192,034
40	Idaho	\$189,891
41	Texas	\$174,347
42	New Jersey	\$171,180
43	Oklahoma	\$162,285
44	Rhode Island	\$160,289
45	Kansas	\$154,019
46	Hawaii	\$147,544
47	Wyoming	\$131,347
48	Colorado	\$73,184

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Rank	State	Average Contributions Received by Senator
49	Minnesota	\$69,998
50	Wisconsin	\$49,138